FOCUS ON

THE PLANNING ACT

A Hard Act To Follow

Seminar Proceedings

Nova Scotia Planning Seminar

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Province of Nova Scotia
Department of Municipal Affairs
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Community Planning Division

TO THE READER:

As we go to press with the proceedings of the seventh planning seminar, practitioners have had over a year to become conversant with the Planning Act, 1983. As evidenced by the discussion herein, there are some instances of it being 'a hard Act to follow'!

Most people have welcomed the increased flexibility and control enabled, and the clarification of Provincial, municipal and public roles in planning. The seminar has certainly helped the Department to interpret and implement various provisions of the Act.

We have welcomed your participation, and look forward to your involvement in planning future events.

Yours sincerely,

Ron Simpson

R. G. Simpson
Provincial Director of Planning

RGS:cfm

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OPENING REMARKS

OPENING REMARKS

Ron Simpson
Provincial Director of Planning
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It's my pleasure to welcome you, on behalf of the Department of Municipal Affairs, to the Community Planning Division's seventh annual planning seminar.

It's encouraging to see such an excellent turnout. I believe we have a new attendance record. I think this demonstrates a growing awareness and interest in land use planning in Nova Scotia. Over the years, these planning seminars have been principally comprised of those working or studying in the land use planning field. Therefore, it is particularly pleasing for our Department to see an increase in the number of elected municipal persons registering for this year's seminar.

We're indebted to several persons who have provided their time and talents - friends and colleagues from municipal planning departments, district planning commissions, provincial departments, academic institutions, and private industry. This seminar would not have been held without their assistance. In particular, I wish to thank Professor Bruce Wildsmith from the Dalhousie Law School who will be addressing us later this morning regarding, "The Charter of Rights and Freedoms", and Professor Peter Homenuck of York University who will be speaking to us this evening on the topic of "Public Participation". I should reserve thanks to my staff until the seminar has ended; however, I have only one opportunity at the microphone, so I extend thanks and congratulations to my staff for an outstanding job organizing the seminar.

More than a year ago, I stood on the podium and introduced many of you to a piece of work entitled, "The Planning Act - A Working Paper in Legislative Form". The sceptics among us (and I'd have to include myself in that category) were very doubtful the Working Paper would lead to a new Planning Act. However, we have now been working with the new Planning Act for the last nine months. As a result, we will be spending the next two days delving into many aspects of the new Act. I hope we will leave the seminar with an expanded understanding of the Planning Act's potential and a fuller comprehension of its problems.

KEYNOTE SPEAKERS

PERSPECTIVE ON PROVINCIAL PLANNING

Michael Simmons, Director
M.R.M.S., Halifax
Secretary to Deputy Minister's
Committee on Land Use
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I have been asked to explain what is meant by Provincial planning and to give you my ideas regarding the Provincial interest in planning. I'll present an idea of how the Planning Act might work in conjunction with Provincial policies as well as implications for the Province and its departments. I'll explain some progress made by the Province over the last five years and give you an example of what Provincial policy might look like. I'll discuss whether policies should be used to look at inter-municipal planning, as well as items defined as Provincial interest. Finally, I will outline adoption procedures for Provincial policies provided in the Planning Act.

To date, there is no Provincial position on how these policies will be developed or used, other than the Planning Act itself, which is a statement of Provincial policy. Therefore, I must emphasize that what I say to you is merely my view of the Planning Act and Provincial policies, rather than the official view.

Let me read what the Planning Act Review Committee said about Provincial planning.

> *"Provincial planning should clarify and advance the Provincial Government's interest in the use and development of land in Nova Scotia. It should also be supportive of and conducive to improving the ability of municipal governments to deal effectively with planning issues within their respective communities. If local initiatives are to have any real impact, there must be an accompanying Provincial commitment to long range planning and resource management."*

A very novel sounding statement. The title of the Act as it was passed reflects that. The old Act always indicated amendments to the Town Planning Act which told us what the actual activities were in Nova Scotia because until quite recently, they were more concerned with urban planning. The new Act reads, "An Act Respecting Provincial and Municipal Planning", and I assume the title was deliberately chosen.

Under the old Act, Provincial planning was regional planning. We don't have regional planning any more. I lament its loss. Regional planning, as it addressed the urban problems of the Halifax-Dartmouth region and tried to address the urban problems of Industrial Cape Breton and Pictou County was worthwhile doing. One of the aims of regional planning was to supply municipalities, as well as the Province, with a statement for the orderly planning and development of a region. In terms of co-ordinating the expenditure of Provincial monies for infrastructure requirements of the region, it's undeniable that great progress was made in the Halifax-Dartmouth area because of the regional trend that would not have been made without the regional plan. Unfortunately, Industrial Cape Breton didn't get a regional plan in place. Cape Breton may have benefitted in the same way that Halifax-Dartmouth benefitted. It's equally regrettable that the towns in Pictou County did not get a regional plan.

Let me review some things that would have happened with difficulty in the Metro area without the regional plan - the water supply system, the solid waste disposal system, the public transportation system, improvements to the highway system, port development, public housing development, and public housing in its broadest sense. More recently, we've seen progress in regional parks. Some of those projects have come painfully but I suspect would not have occurred at all had it not been for regional planning. These things haven't necessarily happened because the municipalities wanted them to happen, in fact, quite often the opposite. Regional planning, as it applied to the heavily urbanized areas of this province with multiple jurisdictions, was good. It will be difficult to advance Provincial planning without regional planning in those situations. We're now stuck with Provincial Statements of Policy which are appropriate for rural situations; however, we've lost a valuable tool in regional planning in the urban areas of the province.

The Province now has to approve municipal planning strategies. We will soon have Provincial Subdivision Regulations as well. We have the Municipal Board and its activities. We have a variety of initiatives under other Provincial Acts: Public Highways Act, Water Act, Environmental Protection Act, Lands and Forests Act, etc., all of which affect the rural municipalities, but not just the rural municipalities. We have had for a number of years (although we've never appeared in the legislation and we only appear obliquely in this Act) the Land Use Policy Committee. The essential point of contact between the old system and the new system is the approval of municipal planning strategies because those municipal planning strategies will have to conform to Provincial policies, when Provincial policies exist.

Let's look now at the Provincial interest. Provincial interest is all pervasive, you can't escape it. It comes in two forms. It comes because of the legal and jurisdictional responsibilities of the Province and it comes, more particularly, because of the funding the Province provides. For example, there is Provincial jurisdiction in natural resources for agricultural development or forestry development, it extends through health and all health related matters, and through transportation. Provincial funding extends to some other areas, particularly industrial development and the provision of industrial parks; the education system and location of facilities; this gives the Province a strong hand as well.

There are some issues that are not municipal concerns, that are not expected to be addressed by municipalities, and if municipalities do try and address them through their municipal planning strategies, their intrusion might be considered unwelcome. The allocation of water rights, for example, is a Provincial responsibility. The operation of certain public highways is a Provincial responsibility, and the resource management question is broadly perceived as a Provincial responsibility. However, looking at the Act as it's written, we find something said about each one of those topics under the section that deals with what a municipality can include in its municipal planning strategy. For example, you look in Section 38(2) which is a list of things that can be included in a municipal planning strategy, you'll find under item 'C', flooding and marshes can be dealt with; under 'H-3', sewage treatment and disposal can be dealt with; under 'H-5', watershed management and protection can be dealt with; under 'J', storm water management can be dealt with. These items are all central to the use of water resources in the province. Under item 'H-4', a municipality can make statements regarding an efficient transportation network. If you look at resource management, for example, under item 'J', erosion control, this is a central concern in agricultural and forestry programs which can be addressed at the municipal level. This illustrates that it is a very difficult task to sort out overlapping sets of relationships between Provincial and municipal responsibilities. One of the things that a Provincial policy might do in a negative sense, is to define areas in which the Province would like to see nothing said by a municipal planning strategy. It might include some of those areas mentioned above.

Let's examine how the Act could work with respect to these Provincial policies. We have in Canada two examples. It is my understanding that when the Planning Act Review Committee was deliberating, it looked very carefully at the Manitoba example. These planning conferences in previous years have had representatives from Manitoba who explained how their system works. More recently, a representative from Ontario explained changes they were considering to their Planning Act. Their new Act makes provision for the inclusion of Provincial policies. Some policies are close to being adopted, the Foodland Guidelines, for example. The difference between Ontario and Manitoba is the fact that the Province was directly administering some or all of the unincorporated areas in Manitoba. If you look at those Manitoba policies, some of them are very detailed. They can be administered directly, so they're almost regulations in the sense that regulations could be formulated under our Act. There doesn't seem to be a distinction between policies and regulations that our Act tries to make. That is a very important distinction.

In Ontario the municipalities are used to directives from the Province regarding what they should do and what I call a more paternalistic arrangement with the Ontario Municipal Board which is very different from the arrangement that we have with our Municipal Board. Perhaps in Ontario there is a longer history of Provincial direction being given to the municipalities than what we have in Nova Scotia. One of the fears that I would have of the Provincial policies is that if they're not thought out very clearly, the perception might be that the Province is dumping its responsibility for land use planning on the municipalities. That is to say the policies were directed in such a way that they required certain land use controls to be included in municipal planning strategies similar to the sorts of things that you might have seen being done under regional plans which caused such difficulties with the acceptance of the regional plan. Then we might find ourselves in the situation where the municipalities are turning around and saying, "hey, you're dumping your responsibility on us! What do you take us for?" Then a stalemate exists and we don't get anywhere. I think that has to be uppermost in everybody's mind when these planning policies are prepared.

This leads me to the central question, "What will these policies look like?" There are several possibilities. They might be very general. They might say to a municipality that has a water supply in an adjacent municipality "you've got to take that into consideration." I would be upset if that was all that was said. I think in that case, municipalities could turn to the Province and say, "you ducked your responsibility." I've outlined some of the problems of being very specific. It can, in turn, look as if the Province is making very particular inescapable requirements on the municipalities. You have to walk a line between the general and the specific.

There is an assumption that municipalities will only deal with land use. There is always a problem with how far land use extends. For example, if we look at industrial land, the Province has a very strong interest in the location and development of industrial land. Some questions that arise that are closely related to industrial land are the price of land in industrial parks, and whether promotions should be done on a regional basis or by individual municipalities.

Are we expecting Provincial land use policies to address those kinds of issues? It's a matter of judgement in each case as to how far away from strictly land use concerns the policies might extend. I've already mentioned the fact that they could include exclusionary statements, areas in which the Province does not want to see any statements from the municipalities because they don't feel it's any of the municipalities' business. They might be obligatory. When I read the Planning Act Review Committee's report, and when I read the way the Act is written, my conclusion is that if there is a Provincial interest, it's not an optional Provincial interest for the municipality. If there's Provincial interest, there's Provincial interest!

Section 38(1) of the Planning Act dealing with a municipal planning strategy says:

> *"a municipal planning strategy or inter-municipal planning strategy shall include any policies necessary to carry out the intent of applicable Provincial land use policies."*

When you read through the Planning Act Review Committee's report, it recognizes the same thing - that Provincial policies are not optional for inclusion in a municipal planning strategy. Under municipal planning content, P.A.R.C. says:

> *"unless some Provincial land use policy adopted under the Planning Act be jeopardized by the failure of the Council to take certain matters into consideration when preparing its municipal planning strategy, the content and scope of the planning strategy should be a local decision."*

In other words, it's a local decision unless a Provincial policy would be jeopardized, in which case, it's no longer a local decision. That is consistent throughout the Act. If you read Section 43, the grounds on which the Minister of Municipal Affairs can decide not to approve a municipal planning strategy, it reflects exactly that statement by P.A.R.C. It can be turned down on the grounds that it does not respect a Provincial policy. The Act goes on to lay out a mechanism for resolving disputes between the Province and the municipality on that very question. Before I get to my specific example, let me talk about the implications for the Province because I think if we look at what P.A.R.C. is saying, they're actually demanding changes on the part of the Province, rather than of the municipalities.

Joanne Lamey, in the C.P.A.C. Newsletter had a few choice words to say about that, which I will read:

> *"During the Planning Act review, many people, including municipal representatives, developers, and community groups called for more co-ordination between Provincial Departments and between the Province and the municipalities. Some even felt the Deputy Minister's Committee on Land Use Policy might be dragged out of the closet, given some legal status and a public profile. The new Act allows Cabinet to establish an inter-departmental committee to advise and assist them in the preparation of policies and regulations. Whether or not Cabinet acts on this provision remains to be seen. This is not to say however, that the Deputy Minister's Committee hasn't been working. It also remains to be seen whether the Cabinet will act in the spirit of the new Act to ensure public access to information before decisions are made."*

The article on the Deputy Minister's Committee on this same page suggests they aren't. We won't go into that right now.

Clearly the intent and the changes in the Act, the recommendations of P.A.R.C., are aimed more at the Province. There are going to be Provincial policies. There will be changes for the Departments. Most of the Departments, except those that are involved in subdivision control of various sorts, do not have many dealings with the municipalities except to deal with particular problems as they arise. The departments will have to become more familiar with the way municipalities work. That won't come easily because people in the various departments are very busy and have heavy workloads responding to crises, just the opposite of planning. They have a different mind set from people who are involved in planning. To them, planning is one more thing they don't know too much about and you're asking them to consider it. You're going to have to be patient. They will have to learn what a policy statement is. That doesn't mean Provincial departments don't have policies. If you ask them what their position is on a particular issue, they'll tell you, but if you ask them to show it to you in writing, you may wait a long time. When it comes right down to it, the budget is what indicates how Provincial departments are going to spend their time and what they're not doing anymore. That's a policy statement. That really is the ultimate policy statement in most of the Provincial departments because if you don't have the money, no point! The departments will have to become involved with planning because when these Provincial policy statements are in place, people in the various Provincial Departments will have to decide whether the municipal planning strategies respect those policies. That will an interesting exercise!

Departments are being asked to advise municipalities during their plan preparation, to enable the Department of Municipal Affairs to approve municipal planning strategies. Obviously, not the way things are today. The Provincial departments will have to become much more aggressive and outgoing, providing information about their policies that can be included in municipal planning strategies in which they have an interest. The relationships between the resource departments and Municipal Affairs will have to improve. If this occurs, it will make a very different orientation to the work of the Department of Municipal Affairs. It won't happen overnight, but gradually. Because of the work being done by the Land Use Committee, a lot of that understanding is already in place. There is sympathy among the departments. In fact, some departments have an active desire to get these policies in place as a way of getting their requirements and their interests known to the municipalities. But it's not universal, and it's going to take a lot of work.

From the municipalities' point-of-view, there are two essential things they want to know from the Provincial departments - what departments are intending to do, and where they intend to do it. I had also written 'when', but perhaps that's asking too much; if you can discover departments' intentions you've done well! If the Provincial policies can be made to do that, or at least progress along those lines, that's as much as we can ask.

I want to talk about the background things the Land Use Committee has been doing, since regional planning went down in its ball of flames a few years ago. The changes in financial assistance to municipalities were very dramatic in furthering the cause of planning. The creation of the entity known as "Class IV Settlements" and the financial underpinnings for that concept is one of the strongest things the Province could have done to further the cause of planning in rural municipalities. The changes that have been made, and are still being made, with regard to subdivision approval among the four Provincial departments that are involved, are dramatic. If you look at the progress the Department of Transportation has made on the private roads issue, although you may disagree with the outcome, at least they're formulating a position. The Department of Health has taken much more useful and flexible stands on septic tanks and size standards which are important in rural planning. We can look at the County of Halifax Stormwater Drainage Policy, which in time will extend to other areas. For the Department of the Environment to have accomplished that in co-operation with all the other people is a dramatic step forward for that Department. Those things are in place and we're very close to a useful framework for subdivision approvals involving Provincial departments.

Other achievements, such as the Lake Major Watershed and the development of the Preston communities represent a significant step for the Departments of Municipal Affairs and Environment. Despite some financial difficulties, the continuation of the Flood Damage Reduction Program was something badly needed and we've managed to keep it in place. The quiet progress we'va been making has been more significant than the rather flamboyant progress we made with regional plans.

Getting to the nitty gritty, I'm going to go through an example. As I said there is no Provincial position on this, so I've chosen the one I'm most familiar with, the Provincial position on aggregates. It was to have been singled out by the Planning Act Review Committee in its report as one of the five or six interim governmental issues that was thought should be addressed. It has ramifications for every municipality. I wrote out what I thought a Provincial policy would look like on aggregates. I have very little hesitation standing here before you and going through it because every single item it contains, is already in place. I'll read through it word-for-word.

The preamble talks about the kinds of problems we have with aggregates, pits and quarries. The objectives outline what Provincial policy is, what it means, and what it's trying to accomplish. Without that, we're floundering around. My objectives for aggregates are these:

1. to secure supplies of high quality aggregate at reasonable cost,
2. to prevent disruption of communities and the environment by extraction operations,
3. to prevent excessive regulatory costs and delays to the aggregate extraction industry.

I believe these are objectives that we tried to achieve in putting the aggregates policy together through the Land Use Committee six years ago. The policy statement itself consists of five statements; this is a citizen's policy statement on aggregates:

1. that operating standards should be similar throughout the province to afford the same standard of environmental protection everywhere and to permit contractors to work under common standards in different municipalities. (In other words, the contractors don't have to rush out and buy some new pieces of equipment to meet some different standards, when they go to the next municipality.)

2. that the following operating standards which are included in the Pits and Quarries Guidelines under the Environmental Protection Act are the operating standards that will be used. The subject matter of those operating standards includes:
   (a) minimum separation distances from adjacent uses,

   (b) rehabilitation standards,

   (c) standards for discharge of silt and contaminated runoff,

   (d) standards for dust emissions,

   (e) standards for noise control,

   (f) protection of groundwater resources,

   (g) safety.

3. All pits and quarries that operate to fulfill Department of Transportation contracts will be required to follow those standards by insertion of the standards into the standard contract specifications of the Department. (That was done five years ago.)

4. All pits and quarries operated on Crown Land are required to follow these standards by inclusion of the standards in any Crown Land Excavation lease. (That was done five years ago.)

5. In the case of rehabilitation, a municipality, if necessary, may adopt stricter requirements than those contained in these guidelines under an Excavation By-law. (The Excavation By-law enabling legislation was passed about ten years ago.)

That deals with operating standards. The second part deals with the protection of high quality reserves. It defines a high quality reserve and explains how it might be protected, which is provided for under the new Act. Section 38 (2-d) says a municipal planning strategy may include statements of policy with respect to, "subject to any other enactment the protection of pits, quarries, and aggregate deposits."

It tells you where advice can be obtained from Mines, Energy, and Transportation about high quality deposits. Item 3 is about location. It says that the location of a pit in any community is a local decision. And item 4 concerns abandoned pits and quarries. It talks about what the guidelines require. It states that the responsibility for abandoned pits remains with the landowner and that the Department of Transportation will, subject to budget constraints, make equipment available for cleanup, grading, and seeding when work is being done in the vicinity of the abandoned pits and quarries. The Department of Transportation has been doing that for the last five years.

There is a great distinction made between operating standards which are province wide and regulations of location which is a local matter. The business I went through before about Lands and Forests administering Crown Land pits and Transportation administering highway pits and that all permanent pits and quarries are administered by the Department of the Environment, under the Environmental Protection Act. The operating standards are identical in all three cases. There is a section on definitions which you have to have. That's a 'Simmons' version' of what a Provincial policy will look like - there's absolutely nothing new in it. We are not as well organized or have the Provincial points-of-view as well thought out in other areas as we do for pits and quarries; however, there are more examples which are in a similar state of understanding among the Provincial departments.

I sympathize with the comment that the Land Use Committee needs to be dragged out of the closet. If however, it means putting the deliberations of the Land Use Committee on display, I hope you never see the day! That would kill the work the Land Use Committee is doing. One of the strength's of the

Act is the procedure it goes through to enable public comment on those proposed policies once an initial draft has been prepared. There are some essential characteristics that I can list about a policy. A policy should clearly define municipal and Provincial roles, so there is no ambiguity as to what is expected of the departments involved, which means that it must respect jurisdictional responsibilities.

Why are we doing this, what do we want it for? The objectives must be clearly articulated. The cost implications for the industry, government, municipalities, and local residents and all people affected were very much uppermost in people's minds when we went through the pits and quarries exercise with the Land Use Committee. It must be administratively efficient; it's tempting to get complicated about these things. It must somewhere tell you where you can get advice and interpretation on what the thing means.

One other major subject area is the Provincial interest and whether it can be defined to include inter-municipal matters. It seems to me that we have enormous problems between municipalities and if planning doesn't address them, we'll be worse off. Of all the issues P.A.R.C. addressed, I thought this was its weakest section and the Planning Act, or the people who drafted the Act, did nothing to rectify it. I believe we can all contribute voluntarily if we want to go into inter-municipal planning exercises. I don't perceive that difficult issues municipalities face are being confronted on a voluntary basis, I just don't see it happening. We have to address them however. Without stretching the intent of the Act too much, in some cases we can define the Provincial interest to include those inter-municipal questions. For example, when there is distress to residents because of the inaction or the inactivity of one municipality when it's required, then there is a case to be made for the Province to intervene. Sometimes there are cost implications for the local economy, or the Provincial economy. We don't have to look very far to find examples. We know an over capacity of industrial land exists in this province, yet we still have serious requests for more industrial land. That is something that needs to be addressed on a sub-regional basis within the province. It is essentially inter-municipal in character, and in many of the cases the Province is being asked to fork out money which is unnecessary. The Province is correct in saying, as it has in Industrial Cape Breton, we will fund one, but not two, industrial parks. You must decide where it will be located. It's inefficient not to have inter-municipal co-operation. The Province should become involved. The only way we have now of addressing that (because we're not going to have any regional plans outside of Halifax-Dartmouth and are probably not going to have voluntary inter-municipal planning) is for Provincial policy statements to force public issues to be addressed on a regional basis.

To clarify what I'm thinking of when I say inter-municipal questions, let me list a few that come to mind: industrial land, transportation facilities, commercial development (not just shopping centres but downtown and shopping centres - the whole commercial development question), and water supply. I hope we will see Provincial policies that address the need for a regional approach regarding those questions. I doubt that it's going to be one of the first ones.

* * * * *

Prior to his talk, Michael Simmons circulated a list of topics that could be included in statements of Provincial Land Use Policy. Seminar participants were requested to number the topics in order of importance. The results of the survey follow.

PRIORITIES FOR PROVINCIAL POLICY STATEMENTS

UNDER THE PLANNING ACT

SURVEY RESULTS

Sample: Distributed to approximately 150 participants at the Municipal Affairs Planning Seminar held in Halifax March 5 and 6, 1984.

Participants included municipal planners and development officers, provincial planners, consulting planners, academics and municipal politicians.

Respondents: 78 participants ranked the items listed in Section 2 of the Planning Act as possible areas for Provincial policy statements. A score of 1 was highest; a score of 24 was lowest. Consequently, the lower the total score, the higher the priority placed on the topic.

Where no score was assigned to a topic, it was assumed that this had a low priority and was given a 24. Therefore total scores are probably higher than intended by the respondents.

Care should be taken in interpreting the results particularly where several topics were grouped into a single sub-section of the Act (e.g., Section 2(c)). Some respondents only assigned one score to the group rather than scoring them individually. The scores on these topics may be misleadingly high, suggesting a lower priority than may actually be the case.

RESULTS		TOTAL SCORES	RANK
High Priority Areas (score less than 700)			
1.	Agricultural lands	384	1
2.	Water supply watersheds and groundwater recharge areas	388	1
3.	Forested lands	529	3
4.	Economic and social impacts of land use planning and development, including large scale developments	645	4
5.	Industrial facilities	696	5
Significant Areas (scores above 700 but less than 1,000)			
6.	Coastal areas, including land covered with water	760	6
7.	Lands subject to erosion, subsidence or similar hazards	765	6
8.	Lands on which mineral deposits are located	798	8
9.	Lands located in floodplains	821	9
10.	Transportation systems	826	9
11.	Recreation lands	829	9
12.	Major utility systems	831	9
13.	Natural and wildlife areas	838	9
14.	Protection of energy resources and related activities	884	14
15.	Sand, gravel and rock deposits	903	15
16.	Commercial	917	16
17.	Co-ordinating and staging of development and public expenditure	979	17

RESULTS	TOTAL SCORE	RANK
Lower Priority Areas (scores over 1,000)		
18. Residential facilities	1,036	18
19. Communication systems	1,044	19
20. Subdivision and development of land	1,082	20
21. Institutional facilities	1,094	21
22. Educational facilities	1,124	22
23. Recreational facilities	1,153	23
24. Cultural facilities	1,209	24
25. Health facilities	1,296	25

NOTE: Professor Wildsmith made frequent reference to the "Canada Act 1982"; its Schedule B, "Constitution Act, 1982"; and in turn, its Part I "Canadian Charter of Rights and Freedoms". A copy of these follows the text of his remarks.

Additionally, he cited many court decisions, and where possible these are noted and appear following.

In speaking about the Planning Act and the Charter of Rights, I'll be doing four things: I'll first give you an overview of the Charter in terms of analysis or philosophy; second, look at some particular provisions in the Charter by the way it's organized; third, look at particular provisions in the Charter as they relate to planning issues; and fourth, look at a particular section in the existing 1983 version of the Planning Act and speak about it in terms of Charter of Rights issues, and speak about it more generally in terms of a constitutional issue that it raises.

Of importance in relation to the Charter, is that there are as yet no answers. Emmerson once made a statement to the effect that there is no history, only biography. What has that to do with the Charter of Rights and the Planning Act? This is really a matter of biography, in that what is made of the Charter and what the Charter becomes will depend in large part on what nine gentlemen sitting in Ottawa, who constitute the Supreme Court of Canada, say on the subject. There are no answers yet because the Supreme Court of Canada hasn't yet spoken in relation to the Charter. A variety of cases has worked its way through the judicial hierarchy, to the Supreme Court of Canada. The present sitting which opened in January, heard four or five cases dealing with the Charter and as a result, we probably will know more about it in the near future.

Another general thing about the Charter is that it has worked a revolution. In March of 1982, the Dalhousie Law School sponsored a conference called, "The Charter of Rights - Law Practice Revolutionized". That title was partly chosen with tongue in cheek to draw lawyers and practitioners to a conference in an academic setting. I believe the two years' experience has shown from the lawyers' standpoint, that a lot of time can be spent, and business can be generated, by utilizing the Charter. That isn't what I really meant when I said that it's worked a revolution. I don't think we should look at the Charter as a make work bill for lawyers, even though I would have difficulty denying that may be the case. What I think the Charter has done and will prove to do over the next decade, is to work a kind of fundamental shift in the role of the courts, and in our perception of the role of the courts. Traditionally, courts applied a set of pre-existing rules or principles in private law suits between private parties. The Charter will force the courts into the role of being adjusters and arbitors of societal values. The essence of what I'm suggesting is that more issues of public interest like "The Cruise Missle "Operation Dismantle" Case", will be presented to judges who will be forced to look at them in an open ended framework where the answers aren't clear, aren't obvious, and judges will be looking at the kinds of value judgements, that are implicit in those situations and end up making choices based on their views of societal values. We will see the courts taking on a more activist role in relation to public affairs in this country. Public affairs won't be quite as much the domain of politicians and citizens, but of the courts, and judges will find themselves caught in the middle of disputes of a public nature which essentially raise questions of values. The reason why courts will be put into this position is twofold. Because the kinds of terms that are used by the Charter of Rights are very open ended terms, such as "freedom of religion", "freedom of expression", "the right to security of the person", and these are not to be deprived of them except in accordance with "principles of fundamental justice". We don't know what these things mean, and they give considerable scope to judges to do what they think is wise, what they regard as fair and just in a particular situation. Instead of being simply the bricklayers, mechanics or technicians, of our judicial system, they will find themselves more in the role of being shapers, molders, builders, engineers, architects, and indeed planners, of the kind of society that we're involved in.

The second reason is that the Charter of Rights, and the Constitution Act in which it's embodied, clearly put the courts in the role of guarding the Constitution and placing the Constitution in the role of being the supreme law in this country. In other words, it isn't Parliament's view or the Provinces' view of what their powers may be, or what the Constitution may say that's important, it's what the judges in the Supreme Court of Canada say on that issue. Although the Charter will work a revolution in the role the courts play and the kinds of cases the courts will hear, we should sound a note of caution; it does not mean that the Charter will be allowed to sweep in like a hurricane and flatten or devastate the existing structures. Our experience with the Charter is limited to two years. We still haven't heard from the Supreme Court of Canada. It is such a potentially powerful tool, and society needs time to adjust to and to accommodate the changes that the Charter will necessitate. We can neither embrace it too quickly in all its many ramifications, nor foreclose the vitality of the Charter. Over the last two years, the judges have tended to be cautious about how they approach the Charter, and Charter issues.

A final introductory point I wish to make is that the Charter fits in well with an increasing phenomena on the part of the Supreme Court of Canada, which is an increasing emphasis on constitutional style cases. While the Charter is one part of our constitution, there are a variety of other components beginning with the British North America Act in 1867 which has impact on the way we do things today. In the last six to eight years, the Supreme Court has revolutionized its own docket in terms of the kinds of cases it examines. This stems from an amendment to the Supreme Court Act a few years ago where the permission of the Court was required before it heard a case. It looks at the general national importance of the issue that somebody wants to address. Obviously, because of restricted workload, it had to pick and choose among a variety of issues, and hear only issues of national interest. When you come down to it, these issues that are of national interest, relate to the Constitution. I was in Ottawa observing proceedings a short time ago and there was an application for leave being heard by the Court. The issue in that particular situation, was an Assessment Act question, of whether a particular piece of machinery or equipment which was located at a manufacturing facility, but had not yet been installed and was not operative, was assessable under the Assessment Act in Alberta. The lawyer who was arguing why the Supreme Court should hear this issue was saying all the Assessment Acts in the various provinces have a provision similar to Alberta, and nobody really knows the meaning of this provision. Mr. Justice Dixon questioned, "why is this of national interest? If there is difficulty about the way the courts have interpreted this section in Alberta, the Alberta Legislature could simply change it. That is, if you want to assess inoperative machinery, you just say so in the statute. Why is this of great importance to take up our time?" I think that reflects the perception on the part of the Court that it is Constitutional and Charter style cases that will take up its time.

To clarify matters, the Canada Act, 1982, contains a Schedule "B", the Constitution Act 1982, which in turn, contains in Part 1, Section 1 to 34, the "Canadian Charter of Rights and Freedoms". So there are more things that were done in the recent package of constitutional amendments than simply creating 'The Charter', and some of the importance of "the Charter" derives from the other sections of the Canada Act or the Constitution Act 1982 and not the Charter itself. The first one I've already alluded to is Section 52. You'll see that sub-section 1 of 52 states that the Constitution of Canada is the supreme law of Canada. You may have taken that for granted, but it becomes important when you think that the Charter is part of the Constitution and is part of the supreme law of this country. It states, "any law that is inconsistent with the provisions of the Constitution is to the extent of the inconsistency of no force or effect". Sub-section 2 of 52 goes on to define what is meant by the Constitution of Canada, and it is defined in a way that clearly includes the Canadian Charter of Rights and Freedoms. In other words, what this section is telling us and telling the courts, is that any law made by any law making body, be it Parliament in Ottawa, the Provincial Legislature in Halifax, or municipalities who are enacting delegated legislation from the legislatures, those laws are to be given no force and effect by the courts; if they are found by the courts to be inconsistent in some way with the Charter of Rights and Freedoms. It's that provision that is really the basis of saying that the Charter has worked a revolution. Instructions that are given the courts and to the judges are fairly explicit in this section which is why people expect the Charter to be given a more prominent role than was ever accorded to its predecessor, the Canadian Bill of Rights. That document was passed in 1960 by the Diefenbaker government and was largely given short shrift by the courts because it was never enshrined in a constitution as is this Canadian Charter of Rights and Freedoms.

How is the Charter going to be enforced? One way is through Section 52, which we've just examined. Section 24 deals with enforcement as well, and sub-section 24(1) states: "anyone whose rights or freedoms as guaranteed by this Charter, have been infringed or denied, may apply to a Court of Competent Jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

That's an open ended style of statement as well. Look first at the word, 'anyone'. Does the word 'anyone' include corporations? More particularly, and I think this is interesting to reflect on, does it include municipalities, such that municipalities, instead of being just on the receiving end of the Charter that is having it used against them, can in fact use the Charter in appropriate situations in their favour?

As a first observation, the Charter seems to use a variety of expressions that are very similar but perhaps a little bit different. For example, the Charter in this section refers to 'anyone'. In a variety of other sections, in particular the very important fundamental legal rights section, refers to 'everyone'. Probably those expressions mean the same thing. Other sections say 'every citizen of Canada' or 'citizens of Canada'. Another section refers to 'any person'. Why isn't 'everyone' and 'anyone' the same as 'any person'? Another section of interest to planning, the equality rights section, refers to 'every individual'. Why isn't 'every person' and 'every individual' the same? It may be because 'any person' refers to legal persons or corporations, where 'individual' refers to a human being. Another section says 'any member of the public'. You can see there is a smorgasbord of terms that has to be sorted out. One suspects that different terms mean different things, and somehow we have to reconcile what is included in one and not in the other. Probably the broadest expressions used are 'anyone' or 'everyone'. There have been a couple of cases at lower court levels that have dealt with the word 'everyone', and those courts have said that 'everyone' includes corporations. One case dealt with freedom of conscience and religion. I recall this involved a drug store in Alberta which wanted to remain open on Sunday and was an attack on the Lord's Day Act prohibiting commercial sale of goods on Sunday.[1] A similar case started here in Nova Scotia involving Dominion Stores has only reached the Provincial court level and was decided against the corporation. The Alberta case, however, is on the Supreme Court docket this term, and we should know its decision soon. There are a couple of other cases dealing with Section 78, the legal rights sections, saying that corporations could rely on the legal rights provisions. There's no reason why one shouldn't think that municipalities are within the terms "anyone" or "everyone", and could in appropriate circumstances, use the Charter to the benefit of the municipality rather than simply being on the receiving end of it.

Section 24 also says that anyone whose rights have been violated can apply to a Court of Competent Jurisdiction. Does a Court of Competent Jurisdiction include the Nova Scotia Municipal Board? I suppose a first reaction is that the Municipal Board is a Board, it isn't a Court, and therefore may seem ridiculous to say that the Municipal Board in Nova Scotia can enforce the Canadian Charter of Rights and Freedoms. There have been a couple of decisions though that reflect on this question. There was a decision involving a police disciplinary panel in Newfoundland.[2] This Newfoundland case noted the fact that in the French version of the Charter of Rights, the word used in the place of court is "A tribunal of competent jurisdiction". One of the interesting things about the Constitution is that both the English and French versions of the Charter and of the Constitution are equally authoritative; when you're trying to decide a question in Nova Scotia, the French version and what it means is just as applicable as the English version. The Newfoundland case decided, that an objection to the Constitution of the disciplinary panel, could be dealt with by that panel, on the basis of whether there was a violation of the Charter of Rights.

Another case dealt with by the Trial Division of the Federal Court of Canada involved an immigration appeal.[3] It held that the Immigration Appeal Board was a Court of Competent Jurisdiction to determine whether Section 7 of the Charter applied, to guarantee the immigrant who was going to be deported certain rights. What often happens is you begin to argue from parallels, by analogy, to other similar situations. For example, in relation to the Charter, one would argue that non-Charter cases apply. One might argue by analogy that the way the American courts have handled similar situations should indicate how our courts should handle them. In a particular analogy that I think is useful, the Supreme Court of Canada dealt with the word 'court' as contained in the Constitution.[4] It was really in a language guarantee section, and it was a question of whether the Quebec Charter of Language Rights, which basically made French the exclusive official language in Quebec violated a provision in the Constitution guaranteeing language rights. The provision in the Constitution guaranteed the right of English and French before courts and the Supreme Court of Canada said that the word 'courts' in that context, included administrative tribunals and boards. Thus English was a second language, or was a co-equal language, before Quebec administrative boards and therefore the Quebec Legislature couldn't diminish that right.

We may get the interesting situation where the Municipal Board may have jurisdiction to deal with Charter of Rights issues. These issues would have to come through the planning process, but an argument would be that the Charter was being violated, and the Municipal Board would have confidence to deal with that. The way the Municipal Board now operates, is that it assumes that the pieces of Provincial legislation that give it authority, are constitutionally proper. The Board doesn't examine the question of validity or vires power of the Legislature to give them that kind of authority. They assume that if someone wants to challenge that authority, they have to go through the regular court system, not to the Municipal Board.

Another interesting point from Section 24 is that it allows this Court of Competent Jurisdiction, maybe the Municipal Board, to give such remedy as it considers just and appropriate in the circumstances. This creates something which I think will be commonly referred to as a 'Charter Torte'. 'Torte' is a word lawyers use to describe a host of situations where people are able to gain remedies, often damages or injunctions, because they've been injured in some way or another. The suggestion is that the Charter has created a situation where somebody can get compensation or relief from the Court, because the Charter was violated, and therefore people have coined the word 'Charter Torte'. Section 24 is very open about what a court may do; damages would be an obvious example; injunctions to stop people from doing something would be another; in the criminal context, having a charge dismissed because of the violation of the Charter. One might well speculate (and I emphasize that it's just speculation) that we'll see the Municipal Board put in the position where in order to enforce the Charter, it may deem it appropriate to award damages, grant an injunction, or give some other kind of relief.

Section 32 relates to the application of the Charter. Subsection 1 tells us that the Charter applies to the Parliament and Government of Canada which means the Federal Government in Ottawa. One of the issues in the 'Operation Dismantle Cruise Test Case' is whether the expression "Parliament" and the "Government of Canada" includes the Federal Cabinet. We still don't know definitively what the Supreme Court is going to do with that issue. I guess a question of more interest to us, is the effect on the Legislature and Government of each province. Obviously, the Charter applies to Provincial legislation and other actions of the Province, but does it apply to municipalities? And the answer that has been given in a couple of cases, is that the Charter applies against municipal legislation and municipal governmental actions.

We should pay particular attention to Section 33. It makes the Canadian Charter of Rights and Freedoms rather unique because it gives us the best of both possible worlds. What it does is to allow the courts to define the terminology in the Charter and to strike down legislation that violates the Charter.

It is very similar to the American model in that respect. The courts say what the Constitution means, and enforce it. Section 33 allows a legislature to enact a by-pass or a legislative over-ride if the Province doesn't like the way the Courts have interpreted the legislation. They can say that the piece of legislation is to apply notwithstanding the Charter of Rights. The provinces felt particularly strong about this at the time the Charter was under discussion and negotiation. At that time the attitude of the Prime Minister was that this particular provision wouldn't do any harm because the political fallout of a government saying 'we don't care that the Charter is violated, we want our legislation to apply anyway', would be too great to prevent it being used except in the rarest of circumstances. Notice that the over-ride only applies to certain sections but of course they are the ones that are of importance. Section 2, fundamental rights and freedoms, and Sections 7 - 15 which include the legal rights and the equality rights. Notice as well in Section 33 that this opt-out only applies for a period of five years.

The last thing to note, Section 1 guarantees rights and freedoms except where reasonable limits prescribed by law and are demonstratively justified in a free and democratic society. This gives us a relative notion of rights and freedoms and not an absolute one. The courts have always had to be involved in a process of balancing legitimate governmental interests against the rights of individuals that are enshrined in the Charter.

Let's look for a moment at a couple of the more substantive provisions in the Charter that may reflect on planning issues. Section 2 says that everyone has the following fundamental freedoms, the first one is freedom of conscience and religion. We really don't know what that means and what the courts are going to make out of it, in particular what the Supreme Court is going to make out of it. Obviously religions and religious entities make use of land. We don't know, for example, what view the Court is going to take on the scope of the word 'religion', whether it's going to be restricted to conventional religions as we might understand them, or whether other kinds or minority religious groups and views will be accorded this protection. To some extent, it seems obvious that the Court intends to give them all this kind of protection and therefore municipal controls that relate to location of a church or subsidiary activities such as running a community style hall, a religious hall, or things that might draw crowds and have some nuisance impact, may be affected. What about church buildings that cut through viewplains?

Section 2(b), freedom of expression is interesting and applicable to a planning scenario. The Ontario Divisional Court said that this protects all forms of expression, whether oral, written, pictorial, sculpture, music, dance, or film.[5] It extends to those engaged in expression for profit, to the recipients as well as to the originators of communications and ideas. In other words, it includes written communication as well as oral presentations. That could have nuisance impact on our adult bookstores and film places within the protection of freedom of expression. What about exotic dancers and those kinds of establishments that municipalities generally want to control or restrict? More particularly, Sections 53(3) and 53(5) of the Planning Act deal with municipal control over architectural design. The argument may be that architectural design is a form of expression - the architect has a right to expression that's being infringed upon, and the developer has a right to direct the kind of building he wants to erect. There's some potential impact on those particular provisions in our Planning Act. Section 54 deals with advertisements and display of signs. They are forms of expression and one has to be careful about the way that is administered to minimize the impact on freedom of expression. You have to have a sense of balance over what is included in these kinds of expressions. These expressions aren't absolute, there are reasonable limits that the courts will uphold. One case that dealt with a municipal style action in Vancouver, over a place called Red Hot Video Limited, held that the provisions in the Criminal Code that dealt with obscenity were valid, did not offend the Charter, and that the Red Hot Video establishment could indeed be regulated by the obscenity provisions in the Criminal Code.[6] Other things, like libel and slander are going to be upheld as reasonable limits. Another case found that we must be guarded against extravagant interpretations of the Charter because to do so would diminish respect for the Charter, and noted that the Charter was not intended to be a transformation of our legal system or paralyze law enforcement.[7] However, we don't know what the Supreme Court of Canada is going to say in any particular situation.

Section 7 deals with the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Is a right to property included in that expression? The American Constitution refers to "nor shall any person be deprived of life, liberty, or property without due process of the law". It enshrines a right to property not to be deprived without due process. Section 7 doesn't use the word 'property'. Is that right to be injected into Section 7? If it is injected, that's going to have a profound impact on planning because virtually every planning decision affects someone's right to property. The injection of the idea of not being deprived without adherence to the principles of fundamental justice will impose a procedural standard on the kinds of decisions that can be made in the planning process. Despite the fact that we may have public participation, public notice, and other like provisions in the Planning Act, those provisions could be subject to scrunity against whatever one regards as the principles of fundamental justice. There have been a couple of cases dealing with the question of property rights, and whether they are secure, but since these are courts of first instance, the Supreme Court of Canada hasn't told us whether its going to say that property rights are protected. There was a New Brunswick case called 'Fisherman's Wharf' which dealt with a situation where seized goods in the possession of a debtor belonged to a third person.[8] Under New Brunswick legislation, the Government could take the goods that I hold even though they don't belong to me, and sell those goods and apply the proceeds to the Government's debt. In this case, the New Brunswick Queen's Bench Division said, "The Charter is silent in specific reference to property rights. In that circumstance it can only be assumed in my view, that the expression "right to security of the person" as used in Section 7 must be construed as comprising the right to enjoyment of the ownership of property which extends to security of the person." In other words, you can't be secure in your person unless you're secure in your property so one is implicit in the other according to this view. It goes on to say why this provision in the New Brunswick legislation violates the Charter. It should be noted that this wasn't the prime ground of the judge's decision, it was only stated as a kind of passing reference, and hadn't been argued to him by Counsel. In fact the decision came out very shortly after the Charter came into force but applied to a situation that existed before the Charter. While you could talk about the legislation continuing to speak into the future and therefore it violates the Charter, the actions of seizing the property and attempting to sell it related to an activity in the past. The Courts have consistently said that we're not going to give the Charter retrospective effect, in other words, a particular situation pre-Charter is not going to be affected by new rights created by the Charter. It went on to the New Brusnwick Court of Appeal and in passing reference only, one of the three judges mentioned the Charter and he said, "the courts should not for example, place themselves in a position of frustrating regulatory schemes or measures obviously intended to re-allocate rights and resources simply because they affect vested rights for legislation almost inevitably affects vested rights."[9] Planning legislation almost inevitably affects vested rights. To avoid difficulties of this kind, Mr. Justice Lafoyer in New Brunswick, is saying that security of property was not expressly protected in the Charter. There's some suggestion that one of those three judges thought that security of property wasn't protected by the Charter because it would involve so many problems. There was an Alberta Queen's Bench case, and the essence of what was said there was that because they expressly left out a reference to security of property, it wasn't intended that it be included.[10] It went on to say, in that particular context, which dealt with expropriation of real property, the Charter had no application to an expropriation because security of property wasn't enshrined. There was a decision of the Federal Court of Canada as well, again very oblique passing reference, but again the suggestion from that case was that the property rights were not protected by the Charter of Rights.

Section 15 deals with equality rights. Section 15 says that everyone is to have equal protection and equal benefit of the law without discrimination. There are a couple of fairly famous planning decisions that deal with this question of discrimination. The first one was a decision of the Supreme Court of Canada in 1959 which seemed to say that it's impossible to have a planning decision without having some element of discrimination. The mere limitation of boundaries involved an element of discrimination. On one side of an arbitrary line, an owner may be prevented from doing something with his property which another owner on the other side of a line with a property which corresponds in all respects except location, is free to do. A number of cases picked up on that kind of thing to justify decisions in which people who seem very close together were treated differently by a municipality.

There is another case from Nova Scotia that has received a lot of attention, the Lacewood Developments Case decided by our Court of Appeal where Mr. Chief Justice MacKeighan gave some definition of what he meant by wrongful discrimination.[12] It was a two part thing. The first is that you give permission to one and refuse it to another, and the second is that you do it with an improper motive of hurting or benefitting someone and without regard to the public interest. The question we ought to ask ourselves is whether under Section 15 the equal benefit of the laws without discrimination phrase is going to mean that people who are similarly situated have to be treated the same. In a planning context, despite suggestion you can have some element of arbitrariness, which is inevitable anytime you draw a line, the Courts are going to ask if you have a good reason for drawing that line where you do, and therefore treating people who seem to be the same, slightly differently. This is going to be one of the more profound impacts that the Charter will have on planning. That courts are going to insist that people who are similarly located be treated the same, and that if it appears that people who are similarly situated are not treated the same, that must be justifiable. In other words, the municipality must justify why people are being treated differently and you can scrutinize the reasons.

I want to turn for a moment to a particular section in the Planning Act, Section 72. Section 72 gives the developer the right of appeal against a municipal council which refuses to enter into a development agreement. Sub-section 4 tells the Board that it's not to do anything unless the decision cannot reasonably be said to be consistent with the intent of the planning strategy. A referral is given from the Board back to Council instructing Council to reflect anew on the application for a development agreement in light of the Municipal Board's decision. If no agreement if forthcoming, as a result of that referral, then the mechanism under Section 6 is that you can apply to the Board to fix the terms of that agreement. Sub-section 7 says that the Board can make any decision the council could have made except it can't commit council to expend money.

What is the real force and effect of Section 72? There are at least two questions of a legal nature that could be raised. Does this provision violate the Charter? Is that provision open to constitutional challenge? The answers depend on your view of what Section 72 really does. Section 72, in the final analysis, allows the Board to impose an agreement on an unwilling Council. It imposes an agreement, a contract, that creates rights and obligations and contains an infinite array of detail on what the developer is allowed to do on a council who doesn't want that particular provision. Putting that in legalize, I suggest the council's freedom to contract or not contract is being interfered with. Enforcing conformity to the municipal planning strategy isn't the problem; the problem is that there is a whole range of developments that could be consistant with the municipal planning strategy but the municipality doesn't like something about this particular proposal. It may not be simply the way the land is to be used, but it may be something more to do with the design detail, or saving historic properties. A whole range of things might come into play, rather than whether this style of development is appropriate. Perhaps freedom of contract is part of freedom of expression, and therefore compelling unwilling councils to enter into agreements violates the Charter of Rights.

A second style of constitutional argument is whether this provision violates Section 96, of the Constitution as a whole. The essence of Section 96 says that courts, Superior Courts, County Courts are to be appointed by the Federal Government. The way the courts interpret that section is that the provinces can't undermine the power of superior or county courts by creating an administrative tribunal. They can't create a provincial tribunal to carry out the same functions that a supreme or county court should carry out. A variety of tests have been presented recently by the Supreme

Court on how to interpret that kind of provision. First you look at whether this kind of function was exercised by supreme courts in 1867. That's historical analysis. If you did that, one might say that in Section 72 the Board is authorized to compel municipalities to carry out their duty. It also involves creating rights and obligations, a form of specific performance that was a traditional Supreme Court or Superior Court function. You have to ask whether what's being done is really settling private disputes and in this context one well might say that all the Municipal Board is doing is resolving a dispute between the developer and the municipality. The final thing is whether in its entire institutional context, the function that the Board is carrying out is central, is essential or is incidental or ancillary. In other words, does the power, even though it's like a Supreme Court has, taken on a different character because of the setting in which it is placed. One might well argue against any suggestion that it violates Section 96 by basically saying that this is just one power that the Board has, like many others that it exercises, as part of a system of administering proper planning in this province. In that respect, it may be unobjectionable.

I have no particular opinion on whether Section 72 passes muster both in relation to the Charter and to Section 96, but I think it's a close case and could bear further analysis. Like most things about the Charter though, it will have to work itself out in the fulness of time. Our present Prime Minister, and architect of the Constitution is always prone to say when unsure about something, "no doubt the universe will unfold as it should."

References:

1. (a) R. v. Big M Drug Mart Limited, November 21, 1983.
    (b) Re: Balderstond and The Queen (1982), 2 C.C.C. (3d) 37 aff'd on other grounds 10 W.C.B. 313 (Man. C.A.).
    (c) Southam Inc. v. Hunter et al. (1982), 136 D.L.R. (3d) 133 (Alta. Q.B.).

2. Re: Nash and the Queen (1982), 70 C.C.C. (2d) 490 (Nfld. Prov. Ct.).

3. Law v. Sol. Gen. of Canada (1983) 144 D.L.R. (3d) 549 (F.C.T.D.).

4. Blaikie v. A.G. Que., (1981) S.C.R. 312, 123 D.L.R. (3d) 15.

5. Re: Ont. Film & Video Appreciation Society and Ont. Bd. of Censors (1983), 147 D.L.R. (3d) 38 (Ont. Div. Ct.).

6. (a) Red Hot Video Ltd. v. City of Vancouver (1983), 3 C.R.D. 125.20-02 (B.C.S.C., Dohm, J.).
    (b) R. v. Red Hot Video Ltd. (1983), 10 W.C.B. 153 (B.C.Prov. Ct.).

7. R. v. Altseimer (1982) 1 C.C.C. (3d) 7.

8. The Queen v. Fisherman's Wharf Ltd. (1982), 135 D.L.R. (3d) 307 (N.S.Q.B.) per Dickson, J., at 315.

9. R. v. Estabrooks Pontiac Buick et al. and Fisherman's Wharf Ltd. et al. (1982), 144 D.L.R. (3d) 21 (N.B.C.A.).

10. Re: Becker and The Queen in right of Alberta (1983), 148 D.L.R. (3d) 539 (Alta Q.B.), aff'd 148 D.L.R. (3d) 539 Alta. C.A.).

11. Scarborough Township v. Bondi, (1959) S.C.R. 444.

12. Re: Lacewood Development Co. and City of Halifax, (1975) 58 D.L.R. (3d) 383 (N.S.S.C., A.D.) per MacKeigan, (J.N.S.).

THAT, WHEREAS in the past certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

AND WHEREAS it is in accord with the status of Canada as an independent state that Canadians be able to amend their Constitution in Canada in all respects;

AND WHEREAS it is also desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to that Constitution;

A respectful address be presented to Her Majesty the Queen in the following words:

To the Queen's Most Excellent Majesty:
Most Gracious Sovereign:

We, Your Majesty's loyal subjects, the House of Commons of Canada in Parliament assembled, respectfully approach Your Majesty, requesting that you may graciously be pleased to cause to be laid before the Parliament of the United Kingdom a measure containing the recitals and clauses hereinafter set forth:

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Constitution Act, 1982 enacted

1. The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

Termination of power to legislate for Canada

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law

French version

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

Short title

4. This Act may be cited as the *Canada Act 1982*.

SCHEDULE B

CONSTITUTION ACT, 1982

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(*a*) to move to and take up residence in any province; and

(*b*) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(*a*) to be informed promptly of the reasons therefor;

(*b*) to retain and instruct counsel without delay and to be informed of that right; and

(*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(*a*) to be informed without unreasonable delay of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*e*) not to be denied reasonable bail without just cause;

(*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the

legislature and government of New Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(*a*) there is a significant demand for communications with and services from that office in such language; or

(*b*) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

Language of instruction

23. (1) Citizens of Canada

(*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(*b*) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Application to territories and territorial authorities

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

Application of Charter

32. (1) This Charter applies

(*a*) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(*b*) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

Citation

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

PART III

EQUALIZATION AND REGIONAL DISPARITIES

Commitment to promote equal opportunities

36. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(*a*) promoting equal opportunities for the well-being of Canadians;

(*b*) furthering economic development to reduce disparity in opportunities; and

(*c*) providing essential public services of reasonable quality to all Canadians.

Commitment respecting public services

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

PART IV

CONSTITUTIONAL CONFERENCE

Constitutional conference

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

Participation of aboriginal peoples

(2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

Participation of territories

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

PART V

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

General procedure for amending Constitution of Canada

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(*a*) resolutions of the Senate and House of Commons; and

(*b*) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of members

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

Expression of dissent

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Revocation of dissent

(4) A resolution of dissent made for the purposes of subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

Restriction on proclamation

39. (1) A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

Idem

(2) A proclamation shall not be issued under subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

Compensation

40. Where an amendment is made under subsection 38(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;

(*c*) subject to section 43, the use of the English or the French language;

(*d*) the composition of the Supreme Court of Canada; and

(*e*) an amendment to this Part.

Amendment by general procedure

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) subject to paragraph 41(*d*), the Supreme Court of Canada;

(*e*) the extension of existing provinces into the territories; and

(*f*) notwithstanding any other law or practice, the establishment of new provinces.

Exception

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

Amendment of provisions relating to some but not all provinces

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

(*a*) any alteration to boundaries between provinces, and

(*b*) any amendment to any provision that relates to the use of the English or the French language within a province, may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

Amendments by Parliament

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Amendments by provincial legislatures

45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

Initiation of amendment procedures

46. (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

Revocation of authorization

(2) A resolution of assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Amendments without Senate resolution

47. (1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

Computation of period

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

Advice to issue proclamation

48. The Queen's Privy Council for Canada shall advise the Governor General to issue a proclamation under this Part forthwith on the adoption of the resolutions required for an amendment made by proclamation under this Part.

Constitutional conference

49. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part.

PART VI

AMENDMENT TO THE CONSTITUTION ACT, 1867

Amendment to *Constitution Act, 1867*

50. The *Constitution Act, 1867* (formerly named the *British North America Act, 1867*) is amended by adding thereto, immediately after section 92 thereof, the following heading and section:

"*Non-Renewable Natural Resources, Forestry Resources and Electrical Energy*

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province, the legislature may exclusively make laws in relation to

(*a*) exploration for non-renewable natural resources in the province;

(*b*) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(*c*) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Export from provinces of resources

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province con-

flict, the law of Parliament prevails to the extent of the conflict.

Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(*a*) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(*b*) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

"Primary production"

(5) The expression "primary production" has the meaning assigned by the Sixth Schedule.

Existing powers or rights

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section."

Idem

51. The said Act is further amended by adding thereto the following Schedule:

"THE SIXTH SCHEDULE

Primary Production from Non-Renewable Natural Resources and Forestry Resources

1. For the purposes of section 92A of this Act,

(*a*) production from a non-renewable natural resource is primary production therefrom if

(i) it is in the form in which it exists upon its recovery or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(*b*) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood."

PART VII

GENERAL

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

(2) The Constitution of Canada includes

(*a*) the *Canada Act 1982*, including this Act;

(*b*) the Acts and orders referred to in the schedule; and

(*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

Repeals and new names

53. (1) The enactments referred to in Column I of the schedule are hereby repealed or amended to the extent indicated in Column II thereof and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

Consequential amendments

(2) Every enactment, except the *Canada Act 1982*, that refers to an enactment referred to in the schedule by the name in Column I thereof is hereby amended by substituting for that name the corresponding

name in Column III thereof, and any British North America Act not referred to in the schedule may be cited as the *Constitution Act* followed by the year and number, if any, of its enactment.

Repeal and consequential amendments

54. Part IV is repealed on the day that is one year after this Part comes into force and this section may be repealed and this Act renumbered, consequentially upon the repeal of Part IV and this section, by proclamation issued by the Governor General under the Great Seal of Canada.

French version of Constitution of Canada

55. A French version of the portions of the Constitution of Canada referred to in the schedule shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

English and French versions of certain constitutional texts

56. Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 55, the English and French versions of that portion of the Constitution are equally authoritative.

English and French versions of this Act

57. The English and French versions of this Act are equally authoritative.

Commencement

58. Subject to section 59, this Act shall come into force on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Commencement of paragraph 23(1)(*a*) in respect of Quebec

59. (1) Paragraph 23(1)(*a*) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Authorization of Quebec

(2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec.

(3) This section may be repealed on the day paragraph 23(1)(*a*) comes into force in respect of Quebec and this Act amended and renumbered, consequentially upon the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

60. This Act may be cited as the *Constitution Act, 1982*, and the Constitution Acts 1867 to 1975 (No. 2) and this Act may be cited together as the *Constitution Acts, 1867 to 1982*.

Peter Newbould, Chairman

We will discuss the new Planning Act and its impact on three distinct jurisdictions in the province; a rural municipality, a town, and a city. Three people will discuss this topic: Janet Holt, the Director of Planning for the rural Municipality of the County of Queens. Queens County does not have much municipal planning in place. Janet is in a position where she will be able to use the new Act and all its nicities. Barry Zwicker is the Director of Planning and Development from the Town of Bedford. He has had a plan adopted under the former Planning Act and is in the midst of looking at that document and the new Act. He is attempting to incorporate by amendment, some of the provisions that the new Act enables municipalities to deal with. He will also be discussing the impact of the new Act as it pertains to a town within the provincial context. Richard Matthews will give his impression of what the new Act has meant to the City of Halifax, representing a highly urbanized area of the province.

Janet Holt

Queens County's population is approximately 11,000. It is located between Lunenburg and Shelburne Counties on the south shore of Nova Scotia, it's a relatively small county. My work involves only the rural municipality, not the Town of Liverpool.

The county has had no land use regulations, no subdivision regulations, no development regulations of any kind, except in the Village of Brooklyn which had a Zoning By-law passed in 1968. It had also a Building By-law from 1957 and currently the Zoning By-law is administered by the Village Commission as a result of a private member's bill which was enacted in 1981. The Building By-law has since been taken over by the municipality and, in a subsequent motion was repealed. The county has actually felt, and will continue to feel, very little effect from the new Planning Act. First of all, we're only in the early stages of a planning program.

The department has existed for about three years. During that time we've prepared background studies, and carried out research on a number of special projects which will ultimately be applied to the planning strategy. The second reason why little effect will be felt is because the program that we're following has been designed in compliance with what we had anticipated in the new Act. This is due, in part, to a very close relationship which the municipal council chose to maintain with the Department of Municipal Affairs.

Some things which we are able to do now which we couldn't do before, were mentioned this morning in part by Michael Simmons. The new Act appears to be helpful to our municipality in that it's more specific to environmental concerns and social concerns. Before those things were hinted at and acted in a variety of different ways around the province. We see an increased concentration on public and social planning and the public response to planning. This has been actively acted upon in Queen's County because Council wanted the public involved, more for political reasons than concern over the impact that planning might have on the community. The overall planning strategy that we're formulating will be composed of a secondary planning strategy for urban areas and policy statements for current land use issues. For example, one policy statement is being prepared for environmentally sensitive areas, protection of aggregate deposits. We are in the process of establishing a Pits and Quarries By-law which will require the rehabilitation of pit and quarry operations. We had some interesting responses regarding that issue on an open line program.

Other particular issues which need to be dealt with in the immediate future are sewage disposal and development standards. We have a lot of private subdivision where subdivisions are being developed by foreign interests, particularly West German interests. Those subdivisions are showing a very high standard of development which the local developers, from Halifax, etc. are not showing at all. We would like to require those areas to increase the quality of their standards. Issues that Michael Simmons addressed are issues which will have to be addressed in Queens County because of the rampant exploitation of our beautiful resources. People refer to it as 'rape and plunder of the countryside'. We're looking at policies which will not conflict with Provincial policies, when the Province develops its policies.

Queens County has a public participation aspect incorporated into its entire planning program. This has the strongest effect, because it's really all that we've done to this point in time. The approach that the municipality has regarding a public participation program is to maintain a 'running dialogue' with the communities involved. In order to do this, we are doing some model planning in Queens County. I feel I should apologize because this model is working in Queens County. We went to the public at the outset to discover their concerns, what information they could give us for the two villages of Milton and Brooklyn, and what recommendations they would like to make. That information was received by the department through meetings with the Village Commissions, open house sessions and ratepayers' meetings, and most recently through an open line television program. I use the term, 'a running dialogue' because as this information is received by the Department, we work with it and return it in the form of policies to the public and say, "is this what you wanted done? Is this the way you wanted those issues treated?" In response, we will take those policies and re-work them until we have the objectives worked out and we have policies established. This is possible because the communities are very small villages. People are very accessible and these ideas can be easily discussed. Not everyone will agree with all the policies, but hopefully their input will make the planning strategy more acceptable than if we were to approach planning by saying "yes, we're here, we're taking all the land you have. You have to paint your house green, and you have to paint yours purple, and they'd better be so many feet apart!" Concerns raised in these meetings have been very useful to us. We are approaching different individuals at each meeting and yet the same concerns are voiced. We're also approaching the public through key community groups, the municipal councillors, and the various media. We have had several radio interviews, a program on cable T.V. as well as local and provincial newspaper coverage.

Subdivision regulations are of particular importance to the municipality. They will have a strong impact because as a rural municipality, Queens County has never had regulations pertaining to the development of the land. Because they are Provincial regulations, the municipal government is unaware of what the regulations involve. That is a concern to the council, the P.A.C., and to the individuals who have to work with them. There is nowhere that they are getting straight answers because the subdivision regulations are in the draft stage. The regulations are very difficult to defend at the local level. Some people say that it's not up to you to defend them but it is the local planning department that the surveyors approach. The politicians aren't sure whether they want to defend them. One of the things councillors fear most is that they will lose what is actually a non-existing authority over this type of regulation. If subdivision regulations are in effect, councillors feel they should administer them. Council is willing to expend money to administer a Subdivision By-law to maintain this perceived authority.

Finally, I want to mention the use of the planning strategy as a management tool. This has been discussed as something new to the Planning Act. I don't perceive it as anything new. I think that planning strategy or the old municipal development plan has always been a management tool. It's the program by which to develop an area, and manage the resources in the area. One essential thing is to present the strategy as a community development program. The uninformed view of planning is that the planning department, the people involved in planning, and the municipal government will take all the unused land. It strikes a note in your heart when the first person attending an open house session says that is what you're going to do, and you say, "ah, planners dreams come true!" They believe you're going to dictate things like colours for housing. That's a fear people have of planning. By presenting planning as a management tool, a community development program, we are able to give the people in the community a more positive view of what it is that planning can do for them. It's not just regulations that say you're not going to do this and that, but rather that it is looking to the future and saying you can have what you want for this community if you are willing to take these steps in preparation for it. Idealistic perhaps! It's working for us!

Barry Zwicker

We're still having difficulty reading the new Planning Act and understanding its contents and changes. I understand several other people are trying to grasp what the final impact of the new Act will be.

One difference between a town and rural municipality, is that towns also have to deal with the Town's Act. In that situation, you play the Town's Act and the Planning Act together, or one against the other in an attempt to use a variety of existing enabling legislation. The Planning Act, being the newest piece of legislation, appears the more flexible and innovative.

In terms of immediate effects on the towns, we now have to advertise every time we have a Planning Advisory Committee meeting. We have to be careful when we call a meeting to ensure the public is aware of the meeting date. The other interesting area in the old Planning Act was the majority of Planning Advisory Committee members had to be elected officials. Our Planning Advisory Committee was made up of all our Council, plus one. In terms of the total Committee, that comprised thirteen members. The Town of Bedford had a great desire to make the Planning Advisory Committee as large as possible, but was unable to do so because members had to be elected. With the new Planning Act, we may now have a P.A.C. that will fill the room. We now have meetings that we call 'the group that meets' - Planning Advisory Committee plus - it just grows. That's an interesting impact the new Planning Act has had on us.

Some of the other changes we're looking forward to are in the area of controlling fill and excavation operations, putting landscaping back into some by-laws, better control on floodplains - utilizing some of the work that's been done by the Flood Damage Reduction Program recently in the Sackville River in Bedford.

Another interesting area is parkland dedication. A new town like Bedford is struggling in several areas. We have had difficulty achieving some of the initial objectives in recreation and recreational land, developing recreational facilities, and trying to come up with money and land in the right location in order to do that. The ability to take land in a variety of places versus exactly where the development or subdivision is taking place, being able to use cash-in-lieu funds for development is a progressive step for Bedford. It may be a regressive step in other areas. Municipalities may end up borrowing parkland reserve funds for development when land may be needed in future. Those areas have to be managed very well in terms of how those funds are utilized.

A disappointing provision in the new Planning Act was the removal of regional planning. There are several areas of concern that have an impact on all four municipalities in this region. If planning is to be done on a voluntary basis, it will not happen. The on-going review of our regional plan will force us to get together in an attempt to resolve some concerns. With any kind of luck we will have some Provincial policies. There is a dramatic need to have Provincial policies, to know where the policies are and whom to talk with to find out what the policies are in any given Provincial Department. There's no question several Provincial policies exist. Unfortunately, municipalities don't have time to go looking for them. The areas of Provincial interest, particularly in our region, have to be identified and in a solid form. Our region could be more effectively managed with a regional planning operation. For example, internal conflict exists within the four municipalities regarding industrial development. Halifax is developing two industrial parks, Bedford has two parks, Dartmouth has two parks. I'm unsure how many exist in the county. We all do independant advertising, independant promotions. There was an effort two years ago to combine promotions but now we're going in our own direction, we're all selling the same features, and the bottom line is we end up cutting each other's throats. That's an area that really should be addressed regionally.

Another area of concern to the municipality is major residential developments; how those developments are serviced, and funded. For example, we have a 985 acre C.M.H.C. land assembly in Bedford. If that develops, it will not only have a dramatic impact on the town, but also on the entire housing market in the region. Halifax is trying to fill up mainland north where they have services; Inter-city Housing where they have schools, etc. However, if you put a 985 acre land assembly consisting of between 15,000 to 17,000 people, you draw a higher percentage than you normally would.

Another interesting comparison for regional discussion is how that area gets serviced. A sewage treatment facility exists in Bedford and Sackville and everything put into pipes gets some kind of treatment before it's dumped into the basin. At the same time, there are one hundred and twenty-five outfalls into Halifax Harbour from both Halifax and Dartmouth and other sections of the county. In order for a residential development or any development to expand in the Bedford or Sackville areas, treatment facilities have to be expanded. In order for the other municipalities to expand, all that's required is a larger pipe to dump into the harbour. Portland Estates, a major private land assembly in Dartmouth, was originally designed to go to the Eastern Passage treatment plant. Because of the capital cost, it's not going that way, it's put into a larger pipe that has capacity in another section of the city. It dumps directly into the harbour. Those kinds of regional issues have to be forced. They won't happen on a voluntary basis.

We're also dealing with non-conforming uses. Substantial changes in the new Act provide a greater latitude for councils and municipalities to deal with that concern. Another area that we're concerned with is being able to appeal the refusal to enter a contract. I'll leave that topic for Richard Matthews to discuss in detail.

The new Planning Act provides some basic tools to deal with growth management. Section 38(2) has to be interpreted in a forward looking fashion. How this section will be interpreted in the future by the Department and by Cabinet, might reveal a difference of opinion between the Province and various municipalities. In the Town of Bedford we have a reasonable handle on land use control. What we are striving for now is to look at some other items that aren't dealt with in the Planning Act, and maybe they can't be dealt with in the Planning Act, but certainly are dealt with in a planning program. Social integration is the result of an active development industry, maintaining a balance in your community so that you become and stay economically viable. In order to achieve those goals, I think the growth management tools will have to become more sophisticated and other sections of the Act may have to be interpreted more liberally. Perhaps some sections of the Act will require amendments. Individual municipalities can go to private member's bills - not to act as a divergent piece of legislation, but to get around problems with the Act and to complement the Act. Generally, it will take two or three years to take full advantage of some of the provisions in the Act. We will no doubt be looking for a few amendments in future.

Richard Matthews

The new Planning Act included a number of changes the City of Halifax wanted to see, and it is pleased to see them included in the new Act. Among these are the inclusion of a Statement of Purpose, which will have some interest in trying to interpret the legislation downstream; the clarification of Provincial responsibilities; and the clarification of the whole process by which regional planning and inter-municipal planning may take place. Although there are deficiencies in that, there is a better more flexible mechanism in this Act than in the previous one.

We're happy to see the clarification and narrowing of the ability to appeal. We are happy to see the mandatory requirement for public participation. It's clearer now than in the previous Act.

The provision for secondary planning strategies acknowledges and gives some legislative bounds to a process that has been used Halifax for a long time. We were happy to see the simplification of timeframes for the notification of the public and for the undertaking of appeals. The guidelines in the new Act for approving plans may make life easier for us. It would be helpful if there were some sanctions on the Minister following the prescriptions of the Act. We like the clarity regarding non-conforming uses, albeit when we addressed the Planning Act Review Committee, we felt, and we still feel, there could have been greater clarity. It's better than the previous situation, however.

Many of these provisions are changes Halifax wanted and recommended. Some provisions didn't go as far as we would like, and some went further. With a couple of exceptions, we find it a good Act. We still have problems with it, however.

I'm not yet certain we fully comprehend all the ramifications of the new Act. There are provisions which we may not address for some time in the normal course of events in the city. Perhaps the verdict is not yet in on the entire Act from our viewpoint. In both submissions to P.A.R.C., the City firmly felt there should be no appeals of a refusal of a request that Council undertake an action merely because that action was in the plan. We still feel very strongly in that regard. I'll explain why. We currently have a case before the Municipal Board involving this very principle. I will not comment directly on the case for that reason. It is very clear, and I think we stated before the Municipal Baord, that we had no problem of that case being before the Board given the present law. The City's position was defined on this issue long ago, and it hasn't changed. I'm talking about four or five years ago and our original submissions to P.A.R.C. Stan Macuch pointed out in his recent book on "Planning Law" that as sub-delegates of provincial power, municipalities are in no way sovereign and must receive their authority from provincial legislatures. They are, in law, no different in status from a Liquor License Board or an Egg Marketing Board. I don't have too many problems that it is within the prerogative of the Province to establish the practice that they have done; however, there may be severe Constitutional impediments to assigning this kind of appeal to a tribunal such as a Municipal

Board. My problem with the Act is more fundamental. Although it seems sensible to say to Councils, "you have to put your policies up front in a plan and you're going to have to live with them," there's a vast difference in not allowing a Council to act at variance with its plan and in requiring that it do something because it was contemplated in the plan. It is different for a Council to say, "we will allow 'x' to occur given that you do 'a, b, and c,' than what the Province now requires. Now if a Council has said, "in order to do 'x' you must do a, b, and c," they must to 'x' or risk the Municipal Board imposing it on them. It's a very different proposition. Inevitably and invariably Councils will be forced by this policy to become more and more conservative in their policies. In order to forestall all undesirable contingencies, Councils will be forced to surrender both flexibility and creativity. They, and we, will become more bureaucratic. The developers will lose considerable ability to innovate and they will on the other hand, gain greater certainty. The Councils will lose the ability to make decisions and will turn more and more of the process over to bureaucrats for administrative action. The new Act, by taking this approach tends to make the plan merely a plainclothes version of the Zoning By-law. Instead of a document which will help Council and the community to think out its priorities and aspirations, and subsequently to consider them against the facts of the situation, when they come to a second and separate legislative action, zoning or contracts. We now have the cart before the horse. The purpose of the plan is simply to be implemented for its own sake and that, I would argue, should not be its purpose. Its purpose should be to give guidance to by-laws and other mechanisms such as contracts. As the law presently stands, whatever we thought we might have wanted yesterday, we are bound to give today, regardless of whether it continues to make sense, given the facts of the situation presented to councils. Councils are elected to act for a community and a plan should help them think through their priorities and their hopes, not make their decisions for them. We believe that we must change the Act and repeal or significantly alter Sections 63 and 72. To do otherwise makes the by-law a hopeless redundancy, we could simply combine it with the plan. Those sections will unfortunately diminish the role of council's ability to plan well. In time, they won't plan at all, merely regulate. I think in another vein, the altering of the make-up of the Planning Advisory Committee was a mistake. I think it was a good tool for in-depth discussions with councils in its previous form, however, we still have a workable situation.

In closing, the new Act has not significantly changed the day-to-day work of planning in Halifax. It has the potential, especially if the Province will show the will, skill, and resources to utilize this provision to be an excellent piece of legislation. However, a couple of its major flaws must be changed, or they will sow the basis for diminishing municipal autonomy, further weaken local democracy and very severely damage the ability and the will to plan at all in cities like Halifax.

PUBLIC PARTICIPATION

Professor Peter Homenuck
York University
Senior Partner, Institute
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I want to deal briefly with four or five topics related to public participation. First, I want to talk about public participation as an evolving special field of relevance to planning and decision making. Secondly, how to make public participation work and work effectively. Thirdly, to give you some idea as to what the requirements are for a successful program and possibly say a little bit about some of my own case experiences, and finally, why public participation is important to you and why you should be interested in it. I'm approaching this topic by thinking primarily about complex and contentious issues and situations.

Public participation is a specialized field of endeavour. The public, in some organized fashion, has always been involved in trying to influence decision making by dealing with the politicians through their organized groups. Lobbying has been going on at all levels of political decision making. In the 1960's and 70's, however, we saw an increased public concern regarding the kinds of decisions being made by professional staff, by planners and engineers. It appeared there was a reaction to decisions that were being seen as not necessarily value free. The kinds of decisions in which people were threatened or perceived that their life-style was threatened, the community image would be affected, property values would decline, health and safety might be affected. I'm sure many of you experienced this initially with urban development proposals dealing with topics such as road realignments, or new highways, or high density urban development. The response to that concern was to identify mechanisms to give the public an opportunity for input. These mechanisms were developed and established either through practice of an organization or through legislation, which is what happened in Nova Scotia. There always were and there still are concerns with public participation activities. It's now an integral part of major decision making processes and it appears to be here to stay. Like all fields of endeavour, public participation is constantly changing and I want to elaborate on a few of those points.

In the 1970's there was considerable public participation activity but still not as a way of doing business on an issue-by-issue basis. What was expected to happen in the 1980's is happening - the opportunities for public involvement and the requirements for it are being built into legislative frameworks. Public participation is being used more and more in contentious situations and there's increased concern about the cost effectiveness of public participation. One very significant change in the late 1970's and early 1980's was a shift in the kinds of issues to which public participation can make an input. There's been a shift from local issues to using public involvement in establishing policies and guidelines such as agricultural policy, economic development policy, waste management policy, at the Provincial and local levels. The reason for this, and the increased opportunities for input into those decision making processes, is that the public has less trust in the politicians, the government officials, and the planners partly because decisions in the past erred. We can all think of situations where we made mistakes. Waste management is probably the most evident. The public has come to the realization that many decisions are too important to be left solely to politicians and government officials. As a result, they're demanding opportunities, guaranteed opportunities, to take part in decision making.

If we accept that public participation is here to stay as part of the decision making process, how do we make it work? I think it was George Bernard Shaw who said, "for every problem that science solves, it creates ten new ones." I think that's true for the social sciences, the political sciences, and is true with public participation. We've solved the issue of providing opportunities, in an organized, formal way, for people to have input but that has created a number of other problems or issues, particularly for politicians and planners. Questions have to be addressed in order to effectively establish a public participation program, I'll mention six or seven. Questions like "who is the public, how much attention should you pay them? how much influence should they have? why involve them at all? when do you involve them? how do you involve them? and can we afford it?" I'll comment briefly on these.

Who is the public? That depends on the issue. Generally, there is no public, rather there are many different publics. Publics that have different needs for information, have different value basis, and different perceptions of what the issues are. The public can include or be characterized by various organized groups such as ratepayers' groups or various lobbies, economically affected interests, experts, and what is referred to as the general public - people who are not in any way represented by an interest or a lobby group. There are different publics that require attention.

How much attention should we pay to them? We have to be attentive enough to understand their concerns and respond to those concerns. From a planner's or a politician's standpoint, it's important to have a two-way communication. You want to correct faulty information about projects. You also want to prevent misconceptions which can colour the attitudes to any decision.

In terms of how much influence they should have, that's a political judgement that varies with the issue. Publics don't have the ultimate responsibility for making decisions but they have opinions and perceptions that should be taken into account. They need to know that their opinions and perceptions have been considered whether or not they are incorporated or rejected.

Why would you want to involve these publics? The publics often provide information that you may not have for decision making purposes or they may be able to reinforce and confirm the information you do have. They obviously can offer opinions, give you a sense of the pulse in the community, and clearly they can identify and assess options. It's important to realize that complex, contentious issues, have no right or wrong answer. There's no right or wrong way of doing something, particularly when it comes to making a planning decision. Therefore, values and opinions become important. We heard Professor Wildsmith's comments, "the judiciary at the national level may in fact, be making some of those value judgements for us, if we can't make them ourselves." It's important to recognize in terms of long range planning that no one has a franchise on the future. Your opinion of what might happen twenty years from now is only as good as everybody else's and therefore getting all of those perceptions forward is helpful.

When do you involve the public? Ideally you try to involve them as early as possible in a process. That isn't always the case, however. Usually the public gets involved after you've started a process. It's important though to get them involved as soon as possible so they have an opportunity to make input. The worst possible mistake is not to involve them in a contentious issue until you get to the decision making or the hearing stage.

How do we involve them? There are many techniques for involving the public. You need to know the purpose of the program, whether you're trying to simply present information, whether you're involved in a mutual educational process, or whether the purpose of the program is to contribute to decision making. You also need to have some sense of what audiences you're trying to reach because there are many different kinds of publics. Some of them may not be relevant to the particular issue at hand.

You need to know whether you're trying to reach organized groups, the general public, some self-selected interest groups. Beyond that, you must realize the techniques you select depend on whom you are trying to reach. Some techniques are simply not appropriate for certain groups of people. For example, if you have had experiences with surveys and questionnaires, you realize they are almost always filled out by middle class, educated people. They will almost always under-represent those with lower educational levels and fewer social skills. If you want to reach people with lower educational levels, you have to interview or use some other technique. The techniques you choose must meet your objectives. Large public meetings which happen to be one of the most preferred techniques, partly because it's cheapest, does little to enable data collection. It would allow you to gather opinion. It does nothing in terms of identifying or evaluating options.

People can get involved in a public participation program using various techniques: two way communication, the degree of user sophistication, the continuity and intensity of involvement. Those add characteristics of those techniques. Staff time, commitment, and cost affect the program. By way of example, you can see if we look at hearings, hearings are intended to evaluate an option. Few people are involved. The degree of two-way communication is not very much, but the degree of user sophistication is high. Very few people can take part in a hearing. The continuity of involvement or the intensity of involvement can be high in a contentious situation. Hearings are expensive and time consuming. On the other hand, just for comparison, you can see these large public meetings have the potential of involving a lot of people. The degree of two-way communication is low. It becomes critical to recognize the advantages and disadvantages of the techniques and to know what it is that you're trying to do with the program so the most appropriate techniques are chosen.

Can you afford it? Time and money are considerations in designing any participation program. Those are constraints that you have to work within but it's also important to balance that against whether you can afford not to do it.

Let me turn for a couple of moments to what the requirements are for a successful public participation program. I've already mentioned the first one is the need to select appropriate techniques and to provide sufficient opportunity for involvement. In most processes, there are some critical stages or key decision points. It's crucial to have allowed the public to have an input at each of those key phases in the process.

Secondly, is to recognize that in presenting information you are not engaged in promotion, and you're not engaged in public relations. The information component of a public participation program has to be balanced so that you indicate both advantages and disadvantages of a situation. To have any credibility your information has to be accurate. You should be straightforward. The information should be easy to comprehend and as comprehensive as necessary so the issue can be understood. Thirdly, is the matter of credibility. The credibility of the agency that is putting the program together, and the credibility of the staff carrying out the program. Often we confuse credibility with expertise. Expertise is only one aspect of credibility. Not only must the persons presenting the information understand what they're talking about, but they also have to have a style of presentation which is understandable. They will need to be perceived as trustworthy to permit an honest two-way flow of communication. Many times programs will fail because the wrong people are sent in to deal with the public. For example, an engineer, hydro-geologist, or other specialized individuals understand the technical implication of an issue, but are unable to answer all the kinds of questions and concerns that come from the public. For example, an engineer, hydrogeologist, or other specialized individuals understand the technical implication of an issue, but are unable to answer all the kinds of questions and concerns that come from the public. Often a highly skilled professional is so close to the issue that all other considerations are not seen as important. For example, the Town of Ajax was considering converting a redundant sewage treatment plant into a limited industrial waste treatment facility. Information centres and open houses were held, staffed with engineers and hydrogeologists, etc. The key engineer kept complaining that the people didn't believe him - this facility would be safe, there would be no danger to their community, no danger to them. He was right. It was going to be a relatively innoculous kind of thing. The public wasn't buying it, however. On the third evening the engineer went home early to attend a ratepayer's meeting in his community. He wanted to ensure his lifestyle and community image wouldn't be upset by the building of a highrise apartment building. He failed to understand why people wouldn't take his word for a waste disposal site, and yet he wasn't prepared to accept the judgement of somebody else regarding the impact of a highrise apartment building. That's what I mean when we get at this issue of the trustworthiness and style of dealing with the public as well as the expertise.

I want to mention just one project example that I've been involved with recently in Cape Breton. This will give you some idea of the creative aspect of public involvement for long range future planning. We were involved in the fall and the preceeding couple of years with the Industrial Cape Breton area, which is made up of the county and six municipalities. The involvement has been to operate a process that would enable the stakeholders in the community to describe the kind of future they wanted for Industrial Cape Breton and how they might achieve it. We made some minor modifications to something called the 'search-conscience process' which uses a combination of large group meetings, small group meeting, task forces and eventually we'll have a lot of public information centre involvement for the purposes of beginning to define that strategy.

To do this, you have to begin with the current situation. What past influences led to it? Once you get a common understanding among the participants of what the present is and what the past has been, the objective is to see if there could be a concensus as to where the region is heading given current influences. The participants in this session included about fifty-five people who were identified as key leaders in the various segments of the community: business, industry, education, labour, political circles. Once an understanding of what the past has been, what the present is, and where you're likely to be going, the next step in the process is to reach an understanding of where these key leaders would like to see the community twenty years from now. What's the desired future? What would you like this place to be like? Once a reasonable concensus has been achieved, the more difficult part is identifying strategies and tasks that will accomplish that desired future, as opposed to what might be probable if you didn't intervene.

There are some basic requirements for this to be successful - you've got to ensure you've covered all the appropriate groups, that all the interests are involved. They recognize that each is an equal stakeholder in the future of that area. There has to be a climate of mutual respect among those participants. That happened in Industrial Cape Breton. The group, the task forces, and the management team are working very effectively. I have every reason to believe that there will be success in the not too distant future.

Public participation is of importance and should be of value to you. Beyond the obvious reasons of gathering useful information, or gathering information that you don't have, or confirming that the information you do have is accurate and valid, there are a number of other reasons. One is that the communities can identify and priorize their concerns for you. They can tell you which things are more important to them. When there are several concerns, some are more important than others.

Secondly, they can identify alternatives - alternatives to the way in which you as an expert might have suggested. This happened recently in Ontario when the Province was attempting to find an industrial waste disposal site. The usual options of landfill were being considered: entombment, standard landfill, or above ground landfill. From the community groups came the option of above ground storage in warehouse type facilities. On the surface that may seem strange but that proposal was researched and evaluated and became another alternative the Province, through its Crown Corporation, has to consider. It is not clear if this option will have an impact on the final decision, but it is an alternative that had not been addressed fully by the technical team. Also community groups can assist in evaluating options, particularly since in many cases, there are no right options. When options are being selected, they can assist in identifying ways of mitigating the negative impacts from particular decisions. If that can be done in the community, I would argue it's better to do it there than through the courts.

Fourth, is the opportunity for creative involvement, which is what I call the Cape Breton project. The opportunity to bring together in a non-argumentative situation, the community leaders that are representative of the public, the planners and the politicians for the purposes of collectively examining long range futures and trying to pick a direction for a community.

And finally, from a selfish standpoint as a planner, a politician, or another decision maker, I think public participation serves the role as a safety valve. If uncertainty and confusion exists about what's right or wrong, then a public participation program serves as a balance to your views and values and those of the Council. Considering and implementing effective public participation programs will be beneficial. Besides being a legislative requirement, you can make them as effective as you choose. Better, more acceptable decisions are reached.

PLENARY SESSION ON SUBDIVISION

Jack Leedham
Co-ordinator
Department of Municipal Affairs
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I've been asked to deal with Provincial Subdivision Regulations enabled under the new Planning Act. Land in this province has been subdivided by plans since 1749. All our land grants are based on plans of subdivision and forty municipalities presently have subdivision regulations. The new Planning Act enables the Minister of Municipal Affairs to prescribe subdivision regulations province wide. These sections of the new Act are not effective until December, 1984, or by earlier proclamation by Governor-in-Council. This will provide sufficient time for the Department to prepare these Provincial regulations, and receive input from municipalities and other associations prior to the Minister giving notice of his intention to prescribe these regulations. This process is well underway.

The most significant change from the existing legislation is that the new Act contains only a single definition of subdivision and the Minister must prescribe these Provincial regulations province wide. The definition of subdivision in the new Act is 'any area of land into two or more parcels and includes a re-subdivision or consolidation of two or more parcels'. Re-subdivision and consolidation are additions to the definition as well.

The framework of the subdivision section of the new Act focuses around Provincial regulations and municipal subdivision by-laws. Provincial regulations will deal with procedures and requirements for the approval of tentative and final plans and the referral of these plans to Departments and agencies for their review and approval. Provincial regulations will be prescribed by the Minister of Municipal Affairs and will be administered by Provincial development officers.

Municipal subdivision by-law adopted by a municipality must include the minimum requirements of Provincial subdivision regulations. Municipal subdivision by-laws are broader in scope, in that they may deal with the construction and the installation of municipal services and streets, sewer and water and open space requirements. Where a municipality adopts a subdivision by-law, the requirements of the Provincial regulations which must become part of the by-law may be waived or varied where the municipality adopts a more stringent requirement or a less stringent requirement where the municipality has addressed the matter that it wishes to vary in a municipal planning strategy.

Some additional matters dealt with in the new Act can be addressed in a subdivision by-law. Three major provisions are possible in a subdivision by-law under the new Act. We have the ability where the municipality has a subdivision by-law, to give a ten percent variance to the frontage and area requirements for two lots shown on a plan of subdivision. Presently, a development officer cannot waive any of the provisions when he is approving a plan of subdivision. Municipalities, in their subdivision by-laws can require fees for the processing of plans. There are open space provisions which are somewhat different. We still have an upper limit of five percent but it is calculated on the assessed value of the new lots, excluding the streets and remaining lot. The applicant may offer equivalent land outside the area of land being sub-divided but the land must be located within the municipality. Council can accept any combination of land or cash to a maximum of five percent. Those are three significant changes that are enabled for municipal subdivision by-laws. These matters cannot be addressed in Provincial regulations.

The new Planning Act clarifies what is and what isn't a subdivision. Section 93 of the Act says that a partition of land pursuant to the Partition Act or the Probate Act is a subdivision and a division of land resulting from a sale of land for taxes pursuant to the Assessment Act is a subdivision. That clarifies two issues which have been outstanding or haven't been clearly addressed in prior legislation. The Act goes on to say what does not apply when you're subdividing property: a division of land by will is not a subdivision; a division of land by an expropriation is not a subdivision; a division of land by an acquisition by the Province is not a subdivision; and a division of land by a municipality, when it's acquiring land or disposing of land for streets or walkways is not a subdivision. A significant change is the division of any area of land into parcels greater than twenty-five acres is not a subdivision within the meaning of this Act.

During the past few months, the Department has drafted two sets of Provincial regulations, one for rural municipalities and the other for towns. They have been forwarded to some seven hundred individuals and municipalities for comments. It was a consultative process. Input for the drafting of these regulations was received from the Surveyor's Association, the Development Officer's Association, the Departments of Transportation and Health, and all submissions presented to the Planning Act Review Committee and to the Law Amendments Committee were reviewed.

The regulations have a variety of parts. The regulations for towns and rural municipalities are very similar. They have a title section and an interpretation section. The regulations for rural municipalities have a section that deals with the procedure for the approval of tentative plans, the requirements for those tentative plans, procedures for final plans and the final plan requirements. We have a section that deals with a waiver from survey. That requirement is only applicable in rural municipalities and only in those municipalities that don't have a subdivision process in place. There's a section of general provisions which deals with access and lot size requirements, endorsement and registration of the plan, and registration fees. We have three schedules that are part of the regulations. They contain the application form and a Schedule 'B' which lists the existing rights-of-way where the municipality and the Department of Transportation can agree on those rights-of-way and Schedule 'C' is the lot size requirement. I'll explain these sections in detail.

The title and interpretation are obvious. A preliminary plan enabled in rural municipalities is an optional first step. It's enabled to get a quick response with the applicant spending very little money, and it supports the Department of Health's regulations for on-site sewage disposal system evaluation. What we're looking at is an application that is commonly referred to as 'your cigarette package plan', a quick application form that allows the applicant to get some response from the Departments of Health and Transportation.

It's not an approved plan, it just allows an assessment of the lots; approval of plans doesn't come until the next stage.

At the preliminary plan, stage 2, the applicant receives comments from the Department to which the plan is referred. The development officer doesn't approve that plan and he doesn't respond to the applicant, the Departments respond directly.

The following is the procedure for tentative plans. When the development officer receives an application for a tentative plan in a rural municipality, he requires eight copies of that plan. The application is received, and the development officer has fifteen days to determine whether that application meets the requirements of the regulations. Once he determines the application is complete, he has to notify the applicant. He forwards the plan to the Departments of Health and Transportation in a rural municipality. In a town he would refer the plan to whatever department the Town would like, normally the Street Committee or Engineering Department. After the development officer has determined it's complete, within 30 days he has to notify the applicant again regarding the comments he's received from these departments. He can approve the plan, or refuse the plan. If he approves the tentative plan, that plan is valid for two years according to the statute. If he refuses the plan, the applicant has the right to appeal.

The requirements for a tentative plan are quite similar to what is presently in place. It must show a key map, a title block, a date, scale, a north point, the names of the abutting property owners, the size of the area of land being subdivided, the approximate size of the lots being created, the street names, and the lots numbered and identified. At the tentative plan stage we want the words 'tentative plan' to be on the plan of subdivision. Because this plan can't be registered in the Registry of Deeds, we want it to be noted differently from the final plan. There must be another space on the plan for stamps and notice related to various approvals.

If the applicant is subdividing lots on a new street or road, there are additional requirements. We require the boundary of the area of land to be surveyed, contours of the area of land, and for the Department of Transportation, road centre line profiles. In the past, these requirements have been asked for on all plans of subdivision at the tentative stage. It's been our experience that this information is only applicable where there are proposed streets and several lots. For the creation of lots on an existing street, this information isn't required. There's a lot of information required for a tentative plan, but it is intended to give the applicant an approved plan of subdivision, so that at the final stage all that would have to be done is to survey that plan. These plans are approved and are valid for two years. I believe once the applicant has an approved tentative plan of subdivision, he can proceed to the final stage with a great deal of certainty; it's a less expensive process.

The approval of a tentative plan can be waived by a development officer. If an area of land is being subdivided into four lots or fewer and there is no service installation or construction of new streets, the applicant doesn't have to go through a tentative plan, he can go right into the final plan provision. The other provision necessary before he can go to final plan, is that there should be a preliminary assessment by the Department of Health where applicable.

Procedures for approval of a final plan are the same as those for a tentative plan. The same fifteen day requirement for the development officer to determine if the application is complete applies. If it's in a town he forwards it to the Street Committee or the Engineer, and in a rural municipality to the Departments of Transportation and Health, to confirm the tentative approval or preliminary approval, and show it on the final plan of subdivision. Within thirty days of receiving this application, the development officer has to again notify, approve or refuse. When he approves the plan at this stage, the plan is forwarded to the Registry of Deeds by the development officer. If he refuses this plan, the applicant has the right to appeal. In this final process, once the development officer has determined that the application is complete, he should be able to go through this review by the Departments of Health, Transportation or the agencies in a town fairly quickly because the tentative plan is approved and the final plan is based on a tentative plan.

The requirements for a final plan are basically the same as those requirements for a tentative plan except these lots have to be surveyed. The stamp of the surveyor who prepared the plan has to go on the plan of subdivision. There are very few differences between the plan requirements at the tentative stage and at the final stage with the exception that information such as water courses, areas subject to flooding, tree and rock out-croppings aren't necessary at the final plan. We've had all that information at the tentative stage and the final plan is based on that approval.

Surveying is a costly item for larger parcels. Survey regulations in the Act only apply to the division of land into parcels smaller than twenty-five acres. We have, in working with the Nova Scotia Land Surveyors, developed a waiver from survey provision. If the lots shown on the plan of subdivision are greater than ten acres, the plan doesn't have to be surveyed and certified by a Nova Scotia Land Surveyor in accordance with survey regulations. The plan does however have to be prepared by a Nova Scotia Land Surveyor, but it doesn't have to be surveyed. The lots shown on a plan have to be ten acres in size and the remainder has to be ten acres in size or greater. If there's a lot shown that is smaller than ten acres, that lot has to be surveyed even if it's the remainder lot. This exemption from survey is only applicable in rural municipalities, and only in those rural municipalities that presently have only regulations or don't have any regulations in place. That's the way we were able to negotiate this with the Association of Surveyors. We didn't want this to be regressive in those municipalities that presently require, through by-law, that subdivision be surveyed.

The regulations contain sixteen or seventeen general provisions and for the most part they deal with access and lot size. The first requirement is that all lots to be approved on a plan of subdivision shall abut a public street or a private road. The reason for that is that most lots require access. A public street is a road that is owned and maintained by the Department of Transportation, or owned and maintained by a municipality, such as a town. Private roads are a new provision in the subdivision regulations and they're not the roads that presently exist in rural municipalities. Private roads have to be designed and approved in accordance with these regulations before they are private roads. A private road by definition is a road that meets the right-of-way, alignment, and gradient of the Department of Transportation standards. It has to extend to and have access on an existing public street. Where the private road is not located on the area of land being subdivided, requiring access over an abutting piece of peoperty, the section of road over another holding has to be clearly granted as an easement for access to the applicant. If right-of-way, alignment, and gradient meet the requirements of the Department of Transportation, the Development Officer can then approve lots shown on the plan of subdivision. Such private roads under Provincial regulations do not have to be built to the standard of the Department of Transportation.

There are some notwithstanding clauses or waivers from the requirements that all lots abut public streets or private roads. There has been some demand for wood lots and camp lots. The regulations do not specifically refer to lots as 'wood' or 'camp' lots; the development officer approves lots, not lots for a specific use. Where a plan of subdivision shows two lots that are further than 1,000 metres from an existing public street, the development officer can approve that plan without having any public street or private road abutting the lots being created. The other possibility is for a parcel of land to have access by water. The development officer can approve up to five lots provided that there is access from a public street to a parking area and then from the parking area to a boat launching facility.

The term "area of land" is defined in the regulations to enable keeping track of the limitation related to the numbers of lots (two or five) permitted without roads. An 'area of land' will be one existing in deed on the date of the start of subdivision regulation, whether the regulation was prescribed for the municipality under a prior Act, or is a proposed Provincial regulation under this Act.

In the past year we've debated and discussed existing (I won't call them private roads) rights-of-way where there are existing developments and the roads are not owned and maintained by the Department of Transportation. The development officer is faced with an application for the approval of additional lots on that road and he can't approve that plan because the Department of Transportation won't give approval. There is now a provision in our regulations whereby the Department of Transportation and the municipality can agree that a particular road exists, and those roads would be listed in Schedule 'B' of the regulations. The development officer can then approve lots on those private rights-of-way. A road in a Schedule 'B' would have a length described so the development officer knows from the public street to a certain point he can approve lots that abut that right-of-way. These plans, once the roads are listed in Schedule 'B', do not have to go to the Department of Transportation for approval.

Another provision allows reduced lot frontage for one lot and one lot only. Again, the control of the one lot and the one lot only is by the area of land definition. This provision, under Section 26 of the regulations, enables the development officer to approve a lot with a twenty-five foot wide access either owned by the applicant, or available as a right-of-way.

These are Provincial regulations. We're attempting to establish a minimum set of regulations and deal with some of the issues in rural municipalities. These requirements in these regulations can be waived or varied by the municipality when it adopts a municipal subdivision by-law. In some cases the one lot definition might seem not a fairly tight requirement but the municipality has the ability to address that in its subdivision by-law and increase the number.

The regulations contain provisions dealing with lot sizes and remainders. When the development officer approves a plan of subdivision, there is a remainder lot. If the lots are smaller than ten acres, they would have to be surveyed by a Nova Scotia Land Surveyor. The remainder lot may not have to be surveyed, if the development officer is satisfied that the remainder lot meets the requirements of the regulations. A provision enables the approval of a plan where an addition is being made to an undersized lot, even though the resulting new lot continues to be undersized. Under present regulations this is not possible, since all lots must meet the regulations.

Another provision in the subdivision regulations deals with minimum width and length. All plans of subdivision to be approved by a Provincial development officer must have a minimum width and length of eight meters. There are other general provisions in the regulations which deal with the length of roads, intersection points, etc. They're standard provisions in our regulations and are very similar to the requirements of the Department of Transportation or towns that deal with streets.

Part II of the regulations deals with endorsement and registration of the final plan. Where the development officer is endorsing a plan of subdivision in a rural municipality, all public streets and roads must be maintained and owned by the Department of Transportation before the development officer can endorse the plan, or the plan must indicate that the roads are private, and meet standards for these. The plan must indicate Department of Health assessment. The plan is then forwarded to the Registry of Deeds and the plan is registered. The subdivision then takes effect.

The final stage of approval is a fee of $10.00 for the registration of the plan, it is not a fee for processing. Schedule 'A', an application form, requires the names of the applicant and his surveyor or agent. Other information deals with the type of land use that may exist on the property and the services. That information must appear on the application form and not on the plan.

Schedule 'C' of the regulations contains minimum lot area and frontage specifications for various situations and degrees of servicing. The approval process will involve the Department of Health, and its assessment may indicate different minimum specifications may be required in certain situations, to permit on-site septic systems. Again, these are requirements in Provincial regulations, and a municipality can vary these either through a subdivision by-law, or a land-use by-law.

In concluding, I wish to indicate how these regulations will be administered. Subdivision regulations will be put in place for those municipalities that have no regulations. The regulations will be administered by Provincial development officers. In areas that presently have regulations and a by-law, we will take another six months to negotiate with those municipalities. In areas where district planning commissions exist, we will request their development officers to administer the regulations. It is hoped a standard set of subdivision regulations should be in place in all municipalities across the province this time next year.

Peter Homenuck

To make this workshop relevant to your work experience, we would like you to discuss any issues or concerns you have about public participation, the way it's being practiced where you work, and any concerns you have as a result of the public participation requirement being built into the new Planning Act.

When we reconvene, Doug Foster, Jens Jensen and I will try to provide you with advice as a result of our experiences.

(QUESTION)

The problem with public participation is educating people. People don't want to participate with unfamiliar topics. You have to educate them. How does one go about educating people to be concerned about issues before they hit their doorstep? Our experience is people don't get involved until their personal little square of property is affected.

Jens Jensen

A lot of people believe they are well informed. They don't really wish to be educated. The approach has to be subtle. You can't bluntly say, "we're going to educate you people so that you'll be smart enough to deal with us." That won't work. People will resent that. On the other hand, it's a truism that the great bulk of the population won't become involved at all. Those who do, are usually responding to something which affects them in a very direct, personal way. Very few people turn on to the great matters of ethics or universal problems. It's when 'the bulldozer is down the street' that people will attend meetings. We must be very careful not to make people feel they aren't well enough informed to deal with us. That will only bring anger and hostilities.

Peter Homenuck

We sometimes forget that a good instrument of public involvement and education is the media. I don't mean reports on council meetings or in letters to the editor column where people are venting their opinions, but rather a concentrated way of providing information, balanced information, about planning, about planning issues, particularly the controversial ones, even if they're not directly affecting the community. The flow of information into the media can, over time, increase the awareness of people to the issues and to all their implications. However, that may be easier said than done. You have to locate the appropriate people in the media and develop a relationship with them. It may not be possible in some circumstances.

(QUESTION)

Why would you legislate public participation? Some opinion exists that public participation will be hindered by having it in the Planning Act.

Doug Foster

The legislation in the Act requiring public participation is being interpreted by the Department of Municipal Affairs and they're saying what's adequate in a public participation resolution. We end up doing some things that appear absurd to our councils and to us, particularly when you're getting into a minor amendment for a planning strategy. Public participation can't be legislated. There has to be some element of responsibility on the part of councils. I don't see the Department of Municipal Affairs being, in any way, a policeman of public participation programs. The councils can subvert the intent of the Act if they want. I don't think they are likely to, but in my opinion, it was a mistake to include public participation in the Act.

Jens Jensen

I agree with Doug on those points. The most specific and unambiguous legislation could be subverted by a council. On the other hand, it is a symbolic statement - a statement of principle. I believe it's important to state those principles, even if in the real world it's simply not realistic to ever think of somebody trying to base a legal action on whether or not the council's resolution was adequate given the intent of the legislation. I think it would be a very difficult case, but it is symbolic and I think some of the symbols are important.

Doug Foster

I don't think we disagree the symbols are important, and I wouldn't have been against something of that nature, but there is a specific requirement in the Act and now it's being interpreted by the Department in a certain way which may be quite valid, except it leads to some ridiculous things occurring.

Jens Jensen

The real test would be for example, when a council passes a municipal planning strategy and submits it to the Minister of Municipal Affairs for his approval. Everything is fine as far as staff review at the Department of Municipal Affairs is concerned, but a group of disaffected people from the area concerned, confront the Minister saying that the council didn't actually carry out what they said in its public participation resolution in the full sense of that resolution or that the resolution itself was somehow inadequate. At that point, we will have a situation where the Department will have to define what will constitute a minimum requirement or minimum standard. I wouldn't care to be the Minister of the day!

Peter Homenuck

There is a difficulty getting the planners, council and various publics to recognize their perspectives and responsibilities. That always comes up in public participation programs and the requirement must be very clear at the outset what the purpose of the program is and how much influence or what kind of role the public is going to play. Publics may not want to acknowledge it, but they understand that the political level has a responsibility to make decisions. The role of the planner may be a little more confusing. Are they to advise the politicians solely or provide information and advise the community as well? Perhaps planners may even be advocates for various interests. The key thing is to try in the beginning of the program to make absolutely clear the extent to which the public can have a say in that particular issue. It will vary from issue to issue and the public will have to make their input, whether it's going to be directly to the planning staff or to the politicians in one way or another or what actual mechanisms there will be for them to take part in that process. You will probably have to repeat that from issue to issue and problem to problem because it's a recurring kind of concern.

(QUESTION)

Do planners have the time, energy and ability to be able to be fully involved in public participation programs and run public participation programs to the fullest possible extent?

Peter Homenuck

Public participation programs are one of the first items to be eliminated from planning departments in times of restraint; they are seen as a frill in many instances. The minimum requirement of holding a meeting or hearing will always be there, but the more extensive techniques that should be utilized drop by the wayside. It costs money for public participation. It requires staff time as well. If the planning commissioners or the councils aren't in a position or choose not to provide the money to provide the staff time, they're not going to do too much beyond the minimum in terms of public participation unless you subsidize it with your own time.

Jens Jensen

That's a very pertinent point. I discovered my time was an important resource. I sought direction from my Board to priorize the work they wanted accomplished. Perhaps planners should manage their time more efficiently and eliminate projects of lesser importance. If we feel public participation time and effort is worthwhile, perhaps we should drop some other projects.

Doug Foster

The public participation program is essential. We've come to recognize this in the rural areas during the last decade of planning in Nova Scotia. Planning doesn't work any other way. It's simply a practical adaptation whether it was in the Planning Act or not. If the resources aren't available, you go back to council and say so, and drop the project if necessary rather than proceed without it. It costs money and we must foot the bill.

(QUESTION)

How do you harness the energy in the community that focuses primarily on opposing things? How do you turn that around and get contributions in the positive sense?

Peter Homenuck

The process that has begun in Industrial Cape Breton is one example of how key individuals in the community have been pulled together. Through the 'search-conscience' kind of format, long range direction setting has been accomplished. By bringing them together, ideas and creative energy and asking them to think about the future have been agreed upon. You have to take the initiative to bring that about - it won't happen by itself. Most planning involvement from community groups and interest groups has been reactive, almost always negative, and for that to be turned around, you have to make the effort and structure to turn it around.

Doug Foster

A large percentage of people arriving at our meetings in the County of Cape Breton are identifiable stakeholders. It soon becomes quite obvious why they're involved. It's a healthy approach to bring those things right out on the table and identify exactly what it is that they want. It isn't negative. The reasons people are involved are obvious, but as long as the community hasn't been polarized on a particular issue, it doesn't appear negative.

Jens Jensen

It's human nature to be reluctant about change and somewhat fearful of uncertainty. Every type of planning decision involves a change. It's simply implicit in what we're doing. If there were never any changes, then presumably planners wouldn't be needed! Now, there's a thought!

Planners are part of government, a part of the super-structure the country carries to manage public affairs. There is a substantial distrust, a cynicism on the part of people about what government does. I think for good reason. That won't change simply because we stand up and say, "trust us!" The best way to develop trust, dialogue and some type of feeling in the public is to enable it to have a meaningful input. Don't begin with a proposal, begin with a statement of the situation and solicit opinion. Their opinion may still be negative or reactive. That approach won't necessarily develop a widespread trust in government or in what we're doing. At least it will tip the scales in favour of a constructive answer or input rather than a negative one.

(QUESTION)

How can we increase the turnout for public participation programs?

Peter Homenuck

The number of people that come out is almost directly proportional to whether they feel threatened or not, the degree of threat that's perceived, with a few exceptions that don't conform to that generalization. If people feel the proposal is one that they believe or feel is going to threaten their lifestyle, their community, their property values, they tend to come out in substantial numbers. If you're talking about what's referred to as 'unwanted land uses', people tend to come out - whether it's waste disposal, group homes, or things of that nature. If it's something more long range, more future oriented or broad policy statements, you're not likely to draw much from the general public, but you're more likely to involve the interest groups.

Doug Foster

We've found that direct notice to householders, through the mail has improved our meeting turnout. There are still problems in some areas where, despite all our best efforts, no one seems terribly concerned or interested. However, these people will probably observe the process as it goes along. I think they're informed and have obviously found more useful ways to spend their time. You have to accept a certain amount of that, but make sure people are informed and have the opportunity to attend. When final policies are being drafted, I believe people will at least check out the policies that are being developed.

Jens Jensen

I don't worry about turnout at meetings. If lots of people come, that's healthy. On the other hand, if there has been good advertising and people still don't attend, there's a message in that situation. People either don't care or they're not concerned about it. One of my first general public meetings in the town of Amherst was disasterous. The only person who arrived at the meeting besides myself was the church janitor - he had come to open the hall! What's the message in that? I'm not sure what the message was, but certainly there was a message there. If people are interested, they'll come and be heard. I don't know whether we should pay every-body to attend meetings, or look at less than two percent of the adult population attending a meeting as a sign of dysfunction.

(QUESTION)

How can we be sure we're getting all the necessary inputs and representative inputs on a particular issue?

Peter Homenuck

As planners, we should have a good sense of the character and makeup of the particular communities we're working with as well as the issues. If we go through the usual information sessions, open houses, notices in the newspapers, and observe that certain elements of the community have not responded, we should find another approach. For example, if a particular low income ethnic group is affected, and they haven't been represented, it's incumbent you find some mechanism to include them. It may be sitting down with interpreters to get input from community leaders. Even though you may have established a program and followed it, you can spot gaps. That's a point that should trigger you to identify some other activity to ensure the entire community has been included.

Jens Jensen

If you're concerned about representation, and it's not forthcoming, there's no choice but to find those people. You'll have to struggle with the question of what it is you want them to represent. The question of how to select people might be a problem. Are you going to pick only nice, safe people to talk to, for example? Are you going to actually put your head on the block and go out and invite (as somebody very cynical migh put it), invite trouble. Some ethical questions are involved there. A sampling questionnaire to solicit a variety of opinion could be used. I'm not sure whether a standardized questionnaire is really a form of public participation. The person answering the questionnaire might not feel that he's participated. I know I wouldn't.

(QUESTION)

What do you do in a conflict situation?

Doug Foster

The conflict seems to be balanced within our group. We don't have a compelling need to enter the fray because during discussion between area residents, there are obvious conflicts. It's inevitable. That's what the whole process involves. We should be used to conflict resolution, and should try to build concensus if that's possible.

Jens Jensen

There may be conflict within the group. Some of the techniques involved in labour management negotiations for mediation types of situations might be very appropriate. Finding common ground, building toward more concensus, achieving compromise, etc. That's a straightforward activity. However, most planners don't have that kind of training or experience by virtue of their academic backgrounds. I don't recall ever being told anything about dispute mediation. I should have been!

On the other hand, there is the type of conflict which is hostility directed toward the planner in a municipality, or government in general. All the people come to a meeting to chase you out of town. That's a different kind of conflict and is the most difficult to deal with because one's actual legitimacy and purpose for being there is being challenged.

Where is the common ground in that kind of thing? For example, we had a rather extreme exercise last spring where the debate within the group which had come to the meeting, wasn't within the group over some disagreement on what to do over a planning issue. The majority of people who had arrived and dominated the meeting just simply wanted no planning activity taking place at all. In fact, they wanted to get rid of us in a very terminal way. Perhaps the fact that Rick McCready and I did survive says something about survival skills, but I'm not sure what to do in those kinds of situations. That's the whole question of legitimacy. Why are you even here talking to us about these issues? We don't agree that there is any problem and we want you to go back to where you came from and never come back! I'm open to suggestion too. I'd like to hear almost anything.

Doug Foster

It's very useful to divide the question into two types of conflict within a community, where in fact the planners can try to perform a mediating role and a negotiating role.

One approach would be to split the roles when there are two kinds of conflict. The planner working with the community is indeed the community's planner and does not get into the position of saying, "yes", but rather, "in my opinion I have to tell you that as a planner you shouldn't have cows in a watershed area", or something like that. Those things have to be said and there are times when we have to say them, but when you have enough staff, you can divide the roles. One planner can take the 'tough guy' role and break the bad news and when the policy the community develops is unacceptable, the planner will have to advise council differently. The planner working for the community doesn't get into the business of conflicting with the group. That's an interesting approach if you have the staff to do it.

(QUESTION)

When should a public participation process start?

Peter Homenuck

It's difficult to know when to begin a public participation program. You need some kind of proposal to begin, to be the spark for the program. For example, a developer's proposal for a shopping centre. The important thing is to convey to the community representatives at what stage you are in the process. They will then understand it's strictly a concept plan or a proposal that needs to be reviewed, analyzed, rejected or modified. It is not guaranteed to be accepted. Whether they believe you is another question.

Jens Jensen

Frankly, there is not sufficient trust on the part of most people to have them believe they have the power to have some meaningful input. Until that barrier is broken, it would be very difficult to continue. On the other hand, if you go with a clean piece of paper, there's a suspicion as well. "What do you mean you don't have any ideas? What are we paying you for?" It's a bit of a dilema.

Doug Foster

All of us have been involved in processes where the participation grew out of a thermo-nuclear explosion over some issue. The solid waste disposal issue seems to generate a lot of heat. Public participation is not a panacea, it can't solve that problem. It's a very nasty problem that has some real losers if it's successful. It doesn't really matter how early you start that kind of a process when you look at some of the alternatives. I'm not saying public participation shouldn't be done. If you look at where those types of issues have been going across the province, how it's backed some politicians against the wall, you know they're often looking for flying saucers to take the thing away. Issues that become polarized are no longer the kind of public participation I like to think about. There are times when you might as well scrap the whole thing and go home when it becomes so hot and polarized. Traditional political solutions will apply then.

ROUNDTABLE SESSIONS

ROUNDTABLE SESSION
TITLE: ENVIRONMENTAL STUDIES
LEADER: DERM ENGLISH, D.M.A.

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The pertinent enabling section of the Planning Act, 1983 is 38(2) (f). It states that a municipal planning strategy may include policy with respect to

> *"requirements for environmental studies to be carried out prior to undertaking specified developments or developments in specified areas;"*

Discussion ranged from the matter of who it was intended should conduct such studies, through to the issue of defining what could be included in the term environmental studies: the Act makes reference to 'social environment' in 38(2) (b).

It was felt that every development has some measurable impact - whether it be physical - site preparation - erosion - or social, such as large apartment structures.

A requirement for environmental study implies that subsequent to study a council would be able to judge the acceptability of the findings or impact. It seems apparent that baseline information and/or pre-determined standards or measures would be essential, to enable council to adjudicate. These would need to be stated in policy, and developers would thus know what standards to meet or exceed.

It was thought that the scope of any required study would have to be in scale with the development, and that off-site or area wide study requirements would have to be very well justified.

The participants indicated a desire for example or guidance as to the range of application that would be permitted by the department. Some expressed an intention to prepare 'test cases' for departmental review, generally on physical problems - erosion, watershed protection, etc.

ROUNDTABLE SESSION
TITLE: LAND USE IMPLICATIONS
OF OIL AND GAS DEVELOPMENTS
LEADERS: GREG HAVERSTOCK
CHRIS LEACH
C.P.D., D.M.A.

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A brief overview highlighted the significant activities associated with the development of offshore oil and gas. While it is important to resolve land use issues related to offshore gas, the priority issue for government is to encourage offshore development to proceed. It was noted that the social service sector is response orientated - thus it is important to have an effective monitoring system to identify service demands and concerns for government action.

Other issues discussed during this session included:

- (a) The impact on housing and emergency shelter, particularly in the Metro area.
- (b) The relative importance of the Venture Project on a global scale and the likelihood of major offshore fabrication facility locating in Nova Scotia.
- (c) The question of whether offshore related harbour front development will occur in Eastern Passage.
- (d) The relative position of municipalities in the overall approval process.
- (e) Cumulative impacts of offshore development identified as Provincial/Federal responsibility.
- (f) Problems associated with speculative migration.

Elements necessary for offshore gas developmet to proceed include:

1. a commercially viable find (required approximately 3 trillion cubic feet of natural gas),
2. a technically viable project,
3. an acceptable tax and revenue arrangement (including the price of gas),

4. an assured market for gas in the north-east United States,

5. an export gas pipeline,

6. a north-east United States gas trunk pipeline,

7. a Nova Scotian gas distributor and distribution system.

The discussion focussed on the potential impact of a pipeline on agriculture, in particular the effect of burning for blueberries and any acreage lost to maple syrup production. It was suggested that agricultural land took up to five years to come into full production after being disturbed during pipeline construction. The pipeline companies suggest that this period is only one year.

The second area of discussion focussed on how planning legislation related to offshore gas development. Offshore gas is quite similar to other major industrial developments with requirements for industrial sites and related infrastructure, and having implications for housing and community services. Under the Planning Act, the Province and municipalities are enabled to put policies and implementing mechanisms in place to address these subjects. Although subject to some over-riding authority such as that of the National Energy Board, municipal planning strategies are one of the most reasonable means for a municipality to outline its policies with respect to the effects of offshore gas exploration and development.

ROUNDTABLE SESSION
TITLE: NOVA SCOTIA LAND USE
POLICY COMMITTEE
LEADERS: NANCY VANSTONE
GERRY POST
M.R.M.S.

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The outline of the structure of the Land Use Policy Committee including the working group and the various issue groups was given. Summaries were given on the activities of the issue groups and a status report was presented for each group. The objective of the Committee is to co-ordinate land use activity at the Provincial level. The results of a survey in which respondents were asked to rank priority areas of land use issues were given. The ranking, in order of importance are: 1. agriculture, 2. watershed, and 3. socio-economic impacts of major development.

There is a need to co-ordinate programs and policies. Positive incentives should be considered as a means to revert land to its original use. Information from the Committee's work should be readily available for public use. It is time for the Committee to go public with its activities. It was noted that at present there is a lack of any process for public involvement.

ROUNDTABLE SESSION
TITLE: CHARTER OF RIGHTS
LEADER: PROFESSOR BRUCE WILDSMITH

A question and answer session was held, based on Bruce Wildsmith's presentation, "The Charter of Rights and Freedoms and the Planning Act."

The group concured that definitive answers regarding the effects of the Constitution on landuse planning are unknown. The Courts have yet to place an interpretation on this question. There is little doubt, however, that the new Charter will have an impact on land use regulations.

ROUNDTABLE SESSION
TITLE: C.P.D. MAPPING PROGRAMS
LEADER: MARK POIRIER, C.P.D.

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A slide format was used to outline six of the mapping programs undertaken by the Community Planning Division and covering or intending to cover the entire province. These included the Agricultural Land Use Survey, the Rural Settlement Survey, the Business Improvement District Mapping System and Downtown Facilities Inventory, the Municipal Electoral District Maps, Sewer and Water Inventory and the Census Information System.

Examples of computer-generated tables illustrating the data available from the Agricultural and Settlement Surveys and the Census Information System were circulated.

Questions raised related to the availability of the Agricultural and Settlement mapping for certain regions of the province, to the degree to which rural planners were involved in the survey planning and initiation, and to the possibility of certain land use problems being noted in addition to the usual items while the survey is being carried out.

ROUNDTABLE SESSION
TITLE: MAINSTREET PROGRAM
LEADER: TONY LAMPORT
DEPARTMENT OF DEVELOPMENT

A slide and verbal presentation described the quantative and qualitive success of the five year old program throughout Nova Scotia. The evolution of downtown organizations to a high level of sophistication in regard to management of programs ranging from street reconstruction to retail promotions was apparent. Discussion and questions dealt with the more complex aspects of the program, through to the current state of retailing, protective legislation, business practice, and attitudes.

ROUNDTABLE SESSION
TITLE: L.R.I.S.
LEADER: ROSALIND PENFOUND
L.R.I.S.

Discussion focussed on the land registration system in Nova Scotia. The existing Registry of Deeds is simply a large public filing system for land related documents. Registering property ownership is not compulsory but for good reason has become common practice in the province. One of the major problems with the existing system is that there is no mechanism for removing old documents which are no longer useful.

L.R.I.S. is proposing a new system of property registration called, "Land Titles System". Under this system, land title would be guaranteed by the Provincial Government. Because of this, title searches which are costly, time consuming and sometimes complicated procedures, would no longer be necessary. As proposed, this system would be phased in and become effective only at the time property ownership is transferred. Since many properties do not change hands very often, it could be quite a long period of time before the proposed system would be totally in place.

This proposed system of land registration is not new. About two-thirds of the world presently use it. In Canada, the system is in use in most of the central and western provinces.

ROUNDTABLE SESSION
TITLE: PARKLAND DEDICATION
LEADER: RIDGE HILTZ
KINGS COUNTY

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Section 49(8-ii) of the Planning Act was discussed. In Kings County there is not always a need or desire to acquire land for recreation. There is a demand however, for recreational facilities such as a community rink.

The Kings County By-law is written in such a way that if only one lot per year is subdivided, the developer doesn't have to dedicate land. A lot over five acres in size does not require dedication of land. It is assumed you have enough recreational space. There is no dedication expected of industrial or commercial land.

Changes under the new Planning Act were outlined and how they might affect Kings County.

Section 91(2-e) The term similar public purposes could be interpreted to mean that now one could use this accumulated money for recreational structures.

92(1) A combination of land and cash-in-lieu of land equal to the amount of the transfer required was not found in the old Act.

92(3) The exclusion of the residue of land owned by the subdivider was also a change.

92(4) It is now possible to make capital improvements to park, playground and public open space areas.

92(5) A parcel of land of equal value may now be given by a subdivider which is outside the original subdivision. This clause should prove beneficial as often the land within the subdivision is of no real use to the county. There may, however, be a parcel adjacent to a schoolyard which would much better fulfil the recreational needs of the area.

Another means of acquiring valued parkland was by zoning (Section 72-2).

In Section 92 (2-e) the term 'usable' was questioned. What happens when you come to acquire a sensitive area when the Act says it must be usable? It was understood the term 'usable' meant suitable for recreational purposes.

Participants were enthusiastic regarding the changes in the Planning Act.

ROUNDTABLE SESSION
TITLE: DEVELOPMENT AGREEMENTS
AND COMPREHENSIVE
DEVELOPMENT DISTRICTS
LEADER: PETER NEWBOULD
C.P.D., D.M.A.

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This session focussed on the use of Development Agreements and Comprehensive Development Districts as provided for in the Planning Act, Chapter 9, Statutes of Nova Scotia, 1983. Section 38(2) of the Planning Act states that a Municipal Planning Strategy may include statements of policy with respect to:

> *38(2) (p) (i) the use of development agreements in accordance with Section 55;*
>
> *(ii) the establishment of comprehensive development districts in accordance with Section 56.*

It is important to note that if the municipal planning strategy does not contain such policies then this method of development control is not available to municipal councils.

Section 55 of the Planning Act states in part:

> *"policies adopted by a council...shall identify matters that the council shall consider prior to the approval of an agreement and the developments that are subject to the agreement...(and) the land use by-law shall identify the developments..."*

It is evident from the wording of this section that policies contained in a Municipal Planning Strategy dealing with development agreements must contain two elements: a set of evaluative criteria and a clear indication of what type of developments that will be subject to this development control technique.

The criteria used to evaluate a given proposal must be based on sound planning principles which may vary depending upon the type of development proposed. If development agreements are to be used to control the establishment of local commercial uses in a residential area then such things as the physical scale of the building to be constructed, its hours of operation and its access to an appropriate road network (collector street) should be considered.

Section 55 requires that the agreement policies also identify what developments will be subject to this process. This identification could range from a very specific reference to regulating the expansion of non-conforming uses as provided by Section 84(3) of the Planning Act to a general description of a development or class of development. The more general approach could state for example, that all commercial development over 10,000 square feet will be regulated by agreement, with proposals for less than the specified square footage regulated by traditional zoning. There are many other possibilities in this area, i.e., apartment buildings containing more than a specified number of units, or the location of industrial uses in areas not designated for industrial use.

The important point to remember is that the policies must clearly identify these developments so that there is no ambiguity left in the minds of a potential developer that an agreement will be required for a given proposal. A mere statement in a policy that indicates Council can consider any development by this process is not sufficient.

The principles established for the use and application of development agreements also pertain to the use of comprehensive development districts. Section 56 of the Planning Act states in part:

> *"Policies adopted by a council...shall identify matters that the council shall consider prior to the approval of an agreement for the development of a comprehensive development district and shall provide for the classification of uses that are to be considered for a comprehensive development district....".*

As with Section 55 of the Act, there must be policies in the strategy containing the two elements previously discussed, i.e, a set of evaluative criteria and a clear statement as to what developments will be subject to this process. The main difference between the two techniques is that comprehensive development districts can cover a large area of land, possibly encompassing a number of different land ownerships while the development agreement only deals with one property and one specific development.

One type of development that is suited to this form of development control would be a major housing development. The agreement between the Council and the owner(s) of the land would clearly establish where the various types of development will be located on the site. From the outset people buying property in the development will know where the single unit, multi-unit, commercial, institutional, and recreational land uses will be located and could make their purchasing decisions accordingly. This is particularly useful if the devlopment is going to be phased over a number of years.

Individuals who purchase property within a comprehensive development district do not themselves enter into the agreement with council. Rather, a municipal development permit is issued by the Development Officer to the person as long as what is proposed to be constructed is consistent with the agreement (Planning Act, Section 46(4)).

The procedures required to implement a comprehensive development district are similar to that of traditional zoning. Areas of land can be indicated on the zoning maps which form part of the Land Use By-law, or more preferably the comprehensive development districts can be held as a "floating zone" and the zoning maps amended accordingly if a proposal comes forward that is consistent with the policies contained in the municipal planning strategy.

Apart from its usefulness in regulating major residential development comprising different densities and types of uses, a comprehensive development district could be utilized for the regulation of the development or redevelopment of a downtown core or an industrial park.

The Planning Act in Section 67 outlines what the agreements entered pursuant to Section 55 or 56 may contain. Essentially the terms of the agreement can only deal with those matters that a land use by-law is enabled to deal with, i.e., yard requirements, etc. plus a few specifically enabled provisions like hours of operation and maintenance of the development. Agreements may also contain terms that deal with the protection of the land (e.g., erosion control) where development is in a "hazard land designation" as identified in the municipal planning strategy. Agreements may also contain some terms which the parties do not consider to be substantial, and those terms may be varied by the two parties without having to resort to the formal amendment procedure prescribed by the Planning Act for the adoption or amendment of an agreement.

It is important to note that an agreement may only contain those terms which the Planning Act specifically enables it to do. Terms contained in the agreement which are clearly outside of those parameters would probably not be enforceable by the municipal council if the developer subsequently refuses to carry out that particular term of the agreement.

In summary, Sections 55 and 56 of the Planning Act expand the range of techniques available to a Council seeking to manage development. Development agreements and comprehensive development districts provide a council with greater powers to regulate development and provide to the public a degree of assurance that what was proposed to be constructed will in fact be constructed as it was presented.

The decision to enter an agreement as well as the decision to refuse to enter an agreement is subject to appeal to the Nova Scotia Municipal Board. This puts an onus on the municipal planner to prepare, and the council to adopt, clear, concise and defensible statements of policy with respect to the use and application of development agreements and comprehensive development districts.

ROUNDTABLE SESSION
TITLE: MUNICIPAL PLANNING
STRATEGIES WITHOUT A
LAND-USE BY-LAW - A
MANAGEMENT TOOL
LEADERS: MALCOLM MAXWELL
GRANT COOKE
C.P.D., D.M.A.

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A provision in the new Planning Act was addressed which allows a municipality to adopt a municipal planning strategy without adopting a land use by-law. This is enabled when the strategy does not contain policies pertaining to the control of land use and development.

The discussion questioned the willingness of municipalities to prepare and adopt this type of strategy. Policies can be changed without a strategy amendment requiring a public participation program and the approval of the Minister of Municipal Affairs. The argument was voiced that the participation program requirement was essential in providing the public an opportunity to express their views on policies of council; however, the question remained as to whether council would desire input of this nature.

Councils are reluctant to form policies which imply commitment and prefer reacting to situations as they arise. Policies regarding capital works, for example, could be included in a strategy not requiring a by-law. However, because priorities on capital expenditures change so quickly, councils are very unwilling to make any kind of commitment in this matter.

Given these arguments, the general concensus of the group was that municipalities will not adopt municipal planning strategies unless they wish to regulate land use and development.

ROUNDTABLE SESSION
TITLE: NON-CONFORMING USES AND
MINOR VARIANCES
LEADERS: ANNE BASTEDO, D.M.A.
BILL CAMPBELL
CITY OF HALIFAX

Under Part VIII of the old Planning Act, a non-conforming building or structure or use of land, buildings or structures could continue to exist. These are uses or buildings which existed before a zoning by-law came into effect for the area in question which, when the by-law became effective, would not conform to the use regulations or spatial standards set out in the by-law. The Act also included provisions which limited the enlargement or extension of a non-conforming use and restricted the rebuilding of a non-conforming building extensively damaged by fire or otherwise. The resumption of a non-conforming use after a six month discontinuance was also prohibited. The old Act also empowered a council to order the occupier of a non-conforming use to keep the premises and surrounding area maintained and an owner who refused to comply could be ordered to terminate the use. This provision was removed from the new Act because it was felt that the maintenance of buildings and uses was more appropriately dealt with under an Unsightly Premises or Minimum Standards By-law.

The provisions in the old Act were based on the assumption that all non-conforming uses are undesirable, and should be contained and where possible, terminated in order to improve the community. The provisons in the new Planning Act provide a council with greater flexibility in the handling of non-conforming uses. Section 87 states that a council may, through its municipal planning strategy provide for the variation of the statutory non-conforming use provisions, which remain basically the same as before, as long as the variation doesn't increase the restrictions on the property owner. To date, the department has seen few, if any strategies which alter these provisions of the Act. I would encourage planners to remember these provisions and address the issue of non-conforming uses in their municipalities to determine whether the provisions in the Act are appropriate or whether council ought to provide otherwise in a new strategy or an amendment to an existing strategy.

The old Act provided the following in Section 47(2):

> *"Where the existing use of a building does not conform to the zoning by-law such use may be changed to a use of the same classification under the zoning by-law."*

The new Act states in Section 84(2):

> *"A non-conforming use shall not be changed to any other use unless the use is permitted for that property by the land use by-law."*

The intent of a change as expressed in the P.A.R.C. Report, had been to permit only the existing specific non-conforming use to continue, unless otherwise set out in a municipal planning strategy. However, the issue has arisen as to how narrowly the new section is to be interpreted. Although the section now states that the changed use must be permitted by the land use by-law, there remains the question of when there has been "a change to any other use". Is a change from retailing men's clothing to hardware a change in the use? I can provide no firm answer to this question as the section has not been litigated as yet, but it may be of assistance to take a look at how the uses are classified in the land use by-law and to keep this in mind when writing a strategy and by-law. If the use is stated as being "Retailing" then one might argue that there has been no change in use, as each use is of the retailing type. However, if the uses are listed as "Men's Clothing Stores" and "Hardware Stores", it is arguable that the use has changed. I think that how the uses are specified in the land use by-law will be an important determination in how a court will decide on an issue such as this, and I would suggest keeping this in mind when drafting a land use by-law.

ROUNDTABLE SESSION
TITLE: PARKS, PARKING LANDSCAPING
LEADERS: FRAN ROBERTSON, C.P.D.
BILL CAMPBELL, CITY OF HALIFAX

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This session focussed on those sections of the Planning Act which addresses the issues of parks, parking, and landscaping.

Section 38 outlines the subjects which may be addressed through a municipal planning strategy; among which are the provision of municipal services and facilities including parklands, playgrounds, public open space and recreational facilities.

A land use by-law may (where provided for in an M.P.S.) regulate, require or prohibit the placement of landscaping, fencing, or screening.

A new provision in the Act allows for municipalities to accept cash-in-lieu of providing open space for parking. Where it's intended to use this option, the rationale must be clearly outlined in the municipal planning strategy.

Municipalities may also address landscaping matters through the mechanism of a development agreement.

Sections 74-75 permit designation of private lands for public parks or recreational areas. These sections also set out conditions for compensation to the owner of said lands.

Section 91(2)(a) permits a municipality which has a subdivision by-law in place to regulate areas to be reserved for public purposes where such matters are not dealt with in a land use by-law. Further, a subdivision by-law may require the transfer of usable land (or cash-in-lieu) to the municipality for public purposes to the extent of five percent of area shown on the final plan of subdivision.

Section 92(5) permits a developer to offer council an area of land equivalent value outside the area being subdivided.

Some of the main points stressed when municipalities intend to address parks/parking or landscaping issues, is that they must be based on clear objectives. Secondly, where standards are set down, they should be kept as simple as possible. Experience has shown it it difficult to deal with complex design criteria.

ROUNDTABLE SESSION
TITLE: HALIFAX-DARTMOUTH REGIONAL
DEVELOPMENT PLAN UP-DATE
LEADER: JOHN MERSEREAU
C.P.D., D.M.A.

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Contents:

- Provincial objectives and policies designed to guide economic and physical development within Halifax County in an orderly and cost effective manner.

- Provincial development control regulations for areas without Municipal Planning Strategies and Land Use By-laws.

Influence of Plan since adoption in 1975:

- Control over urban form has meant reduced Provincial expenditure on transportation and piped servicing infrastructure.

- Housing affordability has been enhanced by the availability of a large supply of low priced serviced residential land.

- The availability of an ample supply of serviced industrial land has improved region's attractiveness to industrial developers.

- Regional park designations have protected valuable land areas for recreational use.

- Valuable corridors have been protected for future highway construction purposes.

- Urban core development has been enhanced.

- Valuable land adjacent to Halifax Harbour has been designated for marine related uses.

- A major new water supply system (Pockwock) has been developed.

- Development in areas without municipal planning strategies has occurred in an orderly fashion under the Regional Development permit system.

Present status of plan:

- major review initiated by Cabinet essentially complete.

Future courses of action:

1. maintain plan in present form,
2. repeal the plan,
3. prepare new/revised statement of Provincial policy.

ROUNDTABLE SESSION
TITLE: MOBILE HOME PARKS
LEADERS: DOUG WILLIAMS, CANADIAN
STANDARDS ASSOC. REP.
DAVE KEEFE, D.M.A.

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The mobile home represents an affordable and desired housing option. The term "mobile" is a misnomer. In the past, mobile homeowners were considered 'transient'. In recent years, however, mobile homes have become permanent housing types and should be treated as conventional dwellings.

Mobile home park residents require the same municipal services, properly designed streets or roads, garbage collection, sewage disposal, water supply, snow removal and recreational facilities as persons living in conventional subdivisions. These amenities are the responsibility of the mobile home park owner. Park owners are required to conform to regulations and requirements of a municipality's Mobile Home Park By-law. Often these by-law provisions do not adequately provide for the required services. The park owner, on the other hand, receives a modest rental income. With the high cost of land, underground services, roads, maintenance and management, the owner is not in a very profitable position. If the park abuts a public road or street with municipal services, the owner can connect to this system; however, if the park is in a rural area (which most are) then the Provincial Departments of Health and Environment require a treatment facility, driving up the cost of provision and maintenance. Secondly, the cost of providing adequate streets, and recreational space also increases the overall amount.

The important issue to consider is the relationship of services required by the municipal by-law to the amount of money being generated on a month-to-month basis from the rental fee.

How can planners draft a Mobile Home Park By-law that will adequately address the problem of providing a better living environment for the residents, while at the same time making these requirements reasonable enough that they will not preclude the development of parks? How do we gain public acceptance of mobile homes and mobile home parks?

The sale of the mobile homes and the opening and expansion of existing parks will continue. They will provide a sound means of housing for many. Another important aspect is the provision for an improved or enlarged mobile home park or space, proper setbacks from streets and side yards and in some cases, positioning the mobile home in relation to the street.

ROUNDTABLE SESSION
TITLE: MOBILE HOME SUBDIVISION
LEADER: TERRY DRISDELLE
DEPARTMENT OF HOUSING

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The following mobile home issues were presented:

1. Mobile homes are an accepted form of housing, meeting C.M.H.C. standards, and having the same lifespan as a standard single family home.

2. The stigma with mobile homes is more commonly with parks, rather than with the home itself.

3. Well maintained mobile homes and associated property does not affect the value of the adjoining properties.

4. Roads within mobile home parks are considered private roads and the park owner is responsible for all internal infrastructure and servicing. In some cases, this has led to improper installation and maintenance of the infrastructure and, as a result, many parks in the Metro area have problems with water and sewer. Mobile homes are not provided with a proper level of services.

To make the mobile home a more acceptable type of housing a number of improvements are necessary within parks:

(a) varied orientations of homes within mobile home parks

(b) adequate parking facilities,

(c) open space, and

(d) landscaping.

Very little can be done with the existing situation, but new parks can be better designed.

The Nova Scotia Department of Housing is presently developing a solution to the typical mobile home park in the form of a mobile home subdivision. The subdivision is located at First Lake Drive in the community of Sackville Lakes. To overcome some of the problems with mobile home parks, the following development guidelines will be adhered to:

1. The lot is purchased by the mobile homeowner.

2. Lot size - minimum frontage 60' and minimum lot size 7,000 sq. ft. The development will include different lot sizes and shapes to permit variety in the placement and orientation of mobile homes.

3. Services - sewer, water and storm laterals will be provided up to the lot line by the Department of Housing and landscaping and driveways will be provided by the lot owner.

4. Foundations - permanent foundations as recommended by C.M.H.C. will be mandatory.

5. Types of mobiles - new or used mobile homes will be permitted provided they meet with N.H.A. mobile home standards and are C.S.A. approved.

6. Site controls - the Nova Scotia Department of Housing will control the location of units and driveways. A standard purchase and sales agreement will control tree cutting, accessory buildings, landscaping, and other items.

ROUNDTABLE SESSION
TITLE: MUNICIPAL PLANNING
POLICIES FOR SUBDIVISION
LEADER: MALCOLM MAXWELL, C.P.D.

The presentation dealt with the use of subdivision by-laws as a planning tool for influencing the pattern of development. The use of statements in a municipal planning strategy to establish a rationale for separate subdivision standards for areas within a municipality was discussed.

Concerns identified included the potential for councils to adopt subdivision by-laws establishing different road requirements, lot sizes, etc., in different areas without any policy statement being required. In general, participants felt that a conventional zoning approach, while more difficult to implement was preferable to influencing land use patterns through subdivision controls.

ROUNDTABLE SESSION
TITLE: PROPOSED PROVINCIAL
SUBDIVISION REGULATIONS
FOR TOWNS
LEADER: HOLLEY SPACEK, D.M.A.

An overview of the regulations as they pertain to towns across Nova Scotia. It was noted that some towns will want to provide for private roads and put standards for their construction in their subdivision by-laws.

Land locked parcels of land are a concern to towns as well as rural municipalities.

Administrative procedures and funding of development officers by the Province were other concerns expressed by elected officials and planning staff in towns.

ROUNDTABLE SESSION
TITLE: ON-SITE HEALTH REGULATIONS
LEADERS: PETER CASEY AND
DAVID PASK
DEPARTMENT OF HEALTH

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- proposed amendments to regulations respecting on-site sewage disposal systems and regulations respecting subdivision of land to be serviced by on-site sewage disposal systems presently in Minister's hands.

- proposed major changes include:

  1. new design specifications for 'built-up' systems,

  2. provision for use of contour systems in Category II and III soils, and

  3. requirement that above be installed by duly licensed contractors.

- specifications for above systems to be more comprehensive such as requirements to compaction tests and sieve analysis

- lot sizes for Category II and III soils on contour systems may be reduced,

- contour system based on principle of lateral flow of effluent in soils and most appropriate in areas with high water tables. Contour drain must be perfectly level.

- practical demonstration of large scale contour system in Port Maitland extensive monitoring being done. Preliminary results very promising.

ROUNDTABLE SESSION
TITLE: CLUSTER DEVELOPMENT
LEADER: HAROLD VERGE
LOUISBOURG AND DISTRICT
PLANNING AND DEVELOPMENT
COMMISSION

Several examples of cluster developments were discussed, with various determining design factors of each examined. All illustrated how irregular topography, lot shape, servicing constraints, maximizing density, or low per unit servicing costs can be accepted as limitations or objectives, and through careful design be incorporated in plans at little or no cost to attractiveness or success.

The Louisbourg example illustrated that a traditional street system could be replaced by a system of lanes of 40 foot width, lots of 40 foot frontage, and lots with an area as small as 4,000 sq. ft.

The development maximizes the number of lots, achieves low per unit servicing cost, and the laneways are quite acceptable in the local 'fishing village' context of adjacent older developments.

Terrain analysis provides direction for lot location and orientation, servicing, and open space selection. Properly selected open space areas can provide suitable soils and locations for garden plots, etc.

ROUNDTABLE SESSION
TITLE: PROPOSED PROVINCIAL
SUBDIVISION REGULATIONS
FOR RURAL MUNICIPALITIES
LEADER: JACK LEEDHAM, C.P.D.

Based on the extensive overview of the proposed Provincial Subdivision Regulations given by Jack Leedham immediately prior to the roundtable sessions, discussion was in the form of a question and answer period regarding the regulations.

ROUNDTABLE SESSION
TITLE: SUBDIVISION DESIGN FOR
PRIVATE ROADS
LEADER: BOB PARKER, N.S. COLLEGE
OF ART AND DESIGN

This session focussed on the new draft Provincial subdivision regulations pertaining to private roads and the issue of standards of construction for private roads.

Private roads are those streets or roads which are not public; where the right-of-way, alignment and gradient is approved by the Department of Transportation and the private road extends to and has access to a public street or highway.

Because there have been no standards for private road construction set in the past, many poorly constructed and maintained private roads have been created. Residents exerted political pressure to have the roads upgraded to public road status. This situation has been unsatisfactory to other taxpayers who must bear the cost for this upgrading.

The draft Provincial subdivision regulations do not contain any directives concerning standards for private road construction. If a municipality wants to deal with construction standards, it may include them in a subdivision by-law.

One comment raised was the section of the draft regulations pertaining to this. Section 91 (1) (c) fails to mention rural municipalities. It was concluded that although the rural municipalities were not specifically mentioned, their right to control construction standards through a subdivision by-law would be recognized by the Department of Municipal Affairs.

Various conditions under which private roads could be well constructed, yet not meet Department of Transportation design standards, were outlined. These alternate standards would be appropriate for:

1. sites with steep or constrained topography,
2. sites which have important vegetation and tree cover,

3. sites where runoff should be reduced and the natural environment conserved,

4. sites where the savings made could be passed on to the consumer,

5. sites where there is no intention in future to convert to a public system (e.g., condominium, tenancy-in-common), and

6. developments for which there is a properly conceived and executed maintenance plan.

These alternate standards would mean a private road which met the needs of access could be well constructed. Some of these design criteria would call for:

- a cleared and grubbed right-of-way of 22 feet to 28 feet,

- a two-way travel surface of 16 feet to 18 feet,

- shoulders of 2 feet,

- retention of a significant amount of tree cover and ground vegetation with a 50 foot right-of-way.

A first class road can be constructed using these alternatives for approximately $14 to $16 per lineal foot (1984 prices) compared to $50 to $60 for a road built to Department of Transportation standards.

Alternate standards and private roads have a legitimate place in the design and construction of many subdivisions. These private roads must be constructed to high standards and the developer should demonstrate that an on-going maintenance plan is available and capable of being put in place one residents or a municipality assumes responsibility.

SEMINAR WRAP-UP

SEMINAR WRAP-UP

Greg Haverstock
Assistant Director
Community Planning Division
Department of Municipal Affairs
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Michael Simmons gave an outstanding presentation yesterday. He gave an informative, common sense presentation on Provincial land use, and the need for Provincial land use policies to be in an organized format. Michael lamented the loss of regional planning in the new Planning Act. He also addressed the issue of the lack of public communication associated with previous Provincial land use planning efforts. He supported the notion that it's useful to develop them in a low key process, but certainly the outcome of that process has to have more public exposure than previous Provincial land use planning efforts. I'm hopeful and optimistic Provincial land use policies will be enacted; however, I wouldn't hold my breath until they appear. Provincial policies will be carefully drafted. If the first few encounter stiff objection, it may be a long time before we see other Provincial land use policies. (A summary of the results of Mr. Simmons' questionnaire was given here. The complete results are reproduced following the text of Mr. Simmons' address elsewhere in these proceedings.)

Bruce Wildsmith presented some thought provoking views on the Canadian Charter of Rights and Freedoms. While well researched, in my interpretation, his views are very preliminary in terms of a probable future of constitutional interpretation. Some points raised may never be raised again; however, some issues may influence all our work in the long term future. The importance of the possibility that much of our work may be seen as discriminatory in nature, and that tests of reasonableness and fairness may be applied with great perseverence, are noteworthy observations.

The panel on municipal planning showed how planning issues and the potential relevance of the new Act varies from municipality to municipality. Janet Holt hasn't done 'Planning Act type planning'. Queens County has a unique opportunity in that it doesn't have to get rid of former bad habits of working with the older legislation. Barry Zwicker raised some real 'nuts and bolts' problems: the importance of solving some of the regional issues affecting the municipality and conceivably a unique problem in Nova Scotia, a P.A.C. that's too large - too many people want to become involved. Richard Matthews, while praising the new Act in some respects, gave an eloquent and forceful objection to the right to appeal a council's refusal to enter into a development agreement where municipal planning strategies have policies that indicate the developments councils will handle, and the criteria to be used to judge those proposals. That would be a great subject for debate and requires further discussion before changes are made.

Comments from one of the roundtable discussions indicated some confusion regarding environmental problems that require background studies. These problems will have to be well defined before someone is sent to study them. Provincial guidelines will be important in using new provisions of the legislation. There's scepticism about the usefulness of the municipal planning strategy without a land use by-law; using it as a management tool. The notion was that if you go to the trouble to do background studies and prepare a municipal planning strategy, then probably you should go one step further and implement some of the land use aspects of it. Similar concern about the interpretation of the minor variance and non-conforming use provisions was discussed. I'm biased towards the offshore oil and gas roundtable. I guess the basic message is that it's useful to have plans and by-laws in place because companies respect them and they're used to working with them.

Professor Peter Homenuck is to be commended for a solid presentation to an impossible audience! Jack Leedham is to be commended for a superb job of simplifying issues associated with the draft subdivision regulations. The questions and concerns raised illustrate that we may only be seeing the tip of the iceberg. Several problems require work if we're going to put a system in place for uniform subdivision administration throughout Nova Scotia.

Bob Parker gave an excellent presentation on what seems workable and reasonable standards which could be included in a municipal subdivision by-law to require construction of private roads to a minimum standard. That's where our legislative system thinking ends. At this point we need a legal and fiscal means to deal with ownership of private roads and more particularly, with the maintenance or the functional elements of maintenance of private roads. There are both a lot of potential applications, and potential problems.

Regarding mobile homes and subdivisions, there's a potential for greatly improved living environments but at some considerable land cost for a larger lot. Some concern was expressed regarding municipal planning policies for subdivisions. We can do many things in by-laws already without policies; however, the notion was presented that policies would broaden and support the requirements and provisions of subdivision by-laws. The roundtable discussions appear to have been informative to all.

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The speakers and panelists were excellent. They left a great deal of food for thought in our minds that we will take home, digest, and regurgitate appropriately within our own jurisdictions. It's been my privilege to attend the Community Planning Division's seminar for a number of years. Comparisons are odious, but I think the seminar this year was extremely timely and as good as any I have attended.

I would like to make my own observations; not observations as a policy spokesperson for the Union of Nova Scotia Municipalities. The opinions that I hold are my own and not necessarily those of my employers.

I was very pleased to see a number of elected people attend this seminar. I think the conference organizers should be complimented for having encouraged elected people to attend. I would like to see them encourage more elected people to attend in the future. The planning process is a co-operative effort. Elected and appointed people must work in concert and in tandem; it is essential for planning.

Provincial policies - don't hold your breath! The Planning Act Review Committee felt unanimously and discussed on many occasions, the essentialness of Provincial expressions of policy in a number of areas as being a desirable and required ingredient to a successful recipe for good Provincial planning. P.A.R.C. felt very strongly about that. I think P.A.R.C. recognized that its dreams would not necessarily be realized within a short time, but nevertheless, it included the necessity for Provincial policy in its recommendations and makes no apology for that. With respect to comments made by elected Provincial officials, as opposed to having policies in place, I would paraphrase something from St. Paul's first letter to the Corinthians and suggest, "that though I speak with the tongue of men and angels, and have not policy, I am as a sounding brass tinkling symbol."

I would like to see a great deal more exposure of the excellent working papers presented by the Deputy-Minister's Committee on Land Use Policy. To my knowledge, the various sectors within that group have produced excellent work. The exposure of those papers, if I can call them that, in my opinion has been far too narrow. If they are kept in house for a reason, the reason is not entirely clear to me. This is an area, I think, where the public could make a contribution and get a fair bit of feedback. The Deputy-Minister's Committee and the various issue groups have nothing whatsoever to be embarrassed about, in exposing the recommendations they have come up with. I would like to see a great deal more public exposure.

I am a great believer and strong supporter - both in my years as an elected person, and now in my time in administration - of public participation. I'm one of those, I hope in the majority, who believes that the successful government of people involves continuing participation by those who are governed. To paraphrase Herrick or one of the old poets, "it's better to have gone public and lost, than never to have gone public at all." I believe that and I hope you do as well. Unfortunately, I also recognize that you can't legislate effective public participation any more than you can legislate effective public morality; it just doesn't happen. However, that's no reason to give up trying. Unfortunately, to leave a public more frustrated after it's participated, is in itself a frustration, and this happens all too frequently. We should consider that we have such an abundance of democracy that our cup runneth over. That may be a reason why the participation is frequently minimal and so much of a question mark to those of us who would like to see more of it. We have so much democracy, I think we sometimes don't cherish it enough. I suspect if you were to ask the people of Poland and Czechoslovakia they would see the matter somewhat differently.

Finally, the Planning Act as it was passed and now stands. Let me quote from Matthew 6: "Consider the lilies of the field how they grow,they toil not, neither do they spin, and yet I say unto you that Solomon in all his glory was not arrayed like one of these." The Planning Act is a good Act and with continued support, patience, nurture, understanding - and perhaps now and then, the odd amendment - it will stand this province in good stead, involve good public participation, and gain the support of the Province of Nova Scotia's elected and appointed officials. Amen!